

Special Committee to Review the Freedom of
Information and Protection of Privacy Act

FIPPA FOR THE FUTURE

June 2022



Report
Third Session, 42nd Parliament



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA



June 8, 2022

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Report of the Special Committee to Review the
Freedom of Information and Protection of Privacy Act.

Respectfully submitted on behalf of the Committee,

Rick Glumac, MLA
Chair

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COMPOSITION OF THE COMMITTEE

Members

Rick Glumac, MLA, Chair
Port Moody-Coquitlam

John Rustad, MLA, Deputy Chair
Nechako Lakes

Susie Chant, MLA
North Vancouver-Seymour

Adam Olsen, MLA
Saanich North and the Islands

Kelli Paddon, MLA
Chilliwack-Kent (From March 10, 2022)

Janet Routledge, MLA
Burnaby North (To March 10, 2022)

Tom Shypitka, MLA
Kootenay East

Henry Yao, MLA
Richmond South Centre

Committee Staff

Jennifer Arril, Clerk of Committees

Karan Riarh, Committee Clerk

Darryl Hol, Senior Research Analyst

Jesse Gordon, Committee Researcher

Mary Newell, Administrative Coordinator

Emma Curtis, Committees Assistant

TERMS OF REFERENCE

On February 14, 2022, the Legislative Assembly agreed that a Special Committee be appointed to review the *Freedom of Information and Protection of Privacy Act* (R.S.B.C. 1996, c. 165) pursuant to section 80 of that Act.

That the Special Committee have the powers of a Select Standing Committee and in addition be empowered to:

1. appoint of its number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Special Committee and to delegate to the subcommittees all or any of its powers except the power to report directly to the House;
2. sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
3. conduct consultations by any means the Committee considers appropriate;
4. adjourn from place to place as may be convenient; and
5. retain such personnel as required to assist the Special Committee.

That any information or evidence previously under consideration by the Special Committee appointed by order of the House on June 16, 2021 be referred to the Special Committee.

That the Special Committee report to the House by June 15, 2022; and that during a period of adjournment, the Special Committee deposit its reports with the Clerk of the Legislative Assembly, and upon resumption of the sittings of the House, or in the next following Session, as the case may be, the Chair present all reports to the House.

EXECUTIVE SUMMARY

The *Freedom of Information and Protection of Privacy Act* (the Act) aims to make public bodies more accountable to the public and to protect personal privacy. As such, it provides a right to access certain records and personal information held by public bodies; outlines rules for collecting, using, and disclosing personal information in the public sector; and provides for independent review and oversight.

The Special Committee to Review the Freedom of Information and Protection of Privacy Act (the Special Committee) was appointed on June 11, 2021, to undertake a comprehensive review of the Act as is required at least once every 6 years. In February 2022, the Special Committee received briefings from the Ministry of Citizens' Services and the Office of the Information and Privacy Commissioner. Following the briefings, the Special Committee launched a public consultation seeking input on the Act, and received 23 presentations and 74 written submissions.

Members carefully considered this input and engaged in robust debate to determine which recommendations to put forward. A particular challenge that Members grappled with was the timing of recent changes to the Act, and the impact this had on the Special Committee's review process. In October 2021, government introduced significant amendments to the Act that received Royal Assent on November 25, 2021. Members expressed differing views on how to approach some of the recent amendments, and therefore chose not to make recommendations in those specific areas. The Special Committee did agree to recommend that an additional review of the Act be undertaken within two years of any substantive amendments, and was also able to find consensus on many other areas as reflected in the 34 recommendations included in this report (see Appendix A).

This report begins with an overview of what the Special Committee heard from British Columbians regarding freedom

of information, privacy, and the Office of the Information and Privacy Commissioner. This is followed by a summary of the Special Committee's deliberations and conclusions, as well as its recommendations. The order of the themes and recommendations does not reflect priority.

The Special Committee recognized the frustration expressed by many with regard to the freedom of information system, and is of the view that a fundamental shift toward a culture of increased transparency could alleviate many of these concerns and better serve British Columbians. Members agreed that the proactive disclosure of more information should be a key priority for public bodies. As such, the Special Committee recommends that public bodies work toward the proactive disclosure of all records that are not otherwise subject to an exception. Recognizing that it will take time to implement the necessary policy and technological changes, in the interim, the Special Committee recommends that publication schemes be adopted to require releasing additional categories of records for disclosure. Other recommendations in this area include: ensuring records of decisions and actions are created and managed; extending the Act to cover additional public bodies; clarifying or narrowing the exceptions to disclosing information; and requiring regular reporting on the administration of the Act.

In addition to this fundamental shift in culture, the Special Committee also agreed that there are several actions that can be taken immediately to address the effectiveness of the freedom of information system. Key recommendations in this area include: modernizing how requests are processed; requiring more detailed requests; reducing the timeline for responding to requests; providing more predictable estimates for processing fees; guaranteeing anonymity of requestors; and reviewing the Act to address the evolving relationship with Indigenous governing bodies.

With respect to protecting the privacy of British Columbians, the Special Committee focused on the impact and risks of public bodies using new technologies. It recommends government examine privacy issues presented by these new technologies, and take immediate steps to address concerns related to data-linking and automated decision-making. The Special Committee also noted the importance of being able to request that personal information be corrected, as well as being able to access personal information. In this regard, it recommends that public bodies be required to update personal information, and that personal information be provided without charge even when requested by a representative. When it comes to protecting the privacy of health information, the Special Committee recognized the existing legal complexity related to health privacy and recommends the development of stand-alone health privacy legislation. Lastly, the Special Committee noted that the changing digital world means that many privacy issues transcend the public sector, and therefore recommends a simultaneous review of the *Freedom of Information and Protection of Privacy Act*, which governs privacy practices in the public sector, and the *Personal Information Protection Act*, which governs privacy practices in the private sector.

The Special Committee agreed that the Information and Privacy Commissioner continues to play an important role in promoting and overseeing British Columbians' access to information and protection of privacy rights. To this end, it recommends providing the Commissioner with new powers to share and disclose information, extend the review period where required, and review allegations of unauthorized destruction of records. The Special Committee also recommends that the consultation process be strengthened when draft legislation could have implications for access to information or protection of privacy, as well as when provisions that override the Act are being considered in other legislation.

In closing, the Special Committee recognizes that access to information and protection of privacy are interconnected and vital for promoting trust in public bodies. As such, it urges immediate action on this report to ensure the Act serves British Columbians today and into the future.

BACKGROUND

About the Act

The *Freedom of Information and Protection of Privacy Act* came into force in 1993. The legislation aimed to achieve a balance between two competing rights: the public's right to access information and the individual's right to have their privacy protected. Prior to its implementation, individuals and organizations were required to justify the necessity of gaining access to information from the government, and it was at the discretion of government to either accept or reject the request. The aim of the Act was to reverse this, putting the onus on government to justify the refusal. The legislation represented a step forward for privacy in British Columbia and put limits on the collection of information.

The Act applies to over 2,900 public organizations in British Columbia, including ministries, agencies, boards and commissions, municipal police, crown corporations, municipalities, school boards, universities, health authorities, and professional regulatory organizations.

The Act has three main purposes:

- **Access to Information** – The Act provides individuals with the right to information and requires public bodies to respond to requests for information. According to the Act, public bodies must disclose information in response to an access request from an individual unless an exception applies.
- **Protection of Privacy** – The Act imposes limits on the collection, use, and disclosure of personal information by public bodies; requires data security measures; and provides individuals a right to request the correction of their personal information.
- **Oversight** – The Act establishes the office, powers and responsibilities of the Information and Privacy Commissioner. The Commissioner is an independent officer of the Legislature who oversees the information and privacy practices of public bodies.

Statutory Reviews

Pursuant to section 80 of the Act, at least once every 6 years, a special committee of the Legislative Assembly must undertake a comprehensive review of this Act and must submit a report to the Legislative Assembly within one year after the date of the appointment of the special committee. Previous statutory reviews have been conducted by Special Committees in 1998-99, 2004, 2009-10, and 2015-16.

2015-2016 Review

In its report, the Committee noted that the Act was a leading model in Canada and internationally for access to information rights and the protection of privacy. The Committee made 39 recommendations focused on specific reforms to address concerns about the freedom of information process and the need for stronger privacy protections for the digital age. Major recommendations focused on:

- Measures to enhance proactive disclosure;
- A duty to document key decisions and actions of public bodies;
- A cohesive and robust information management framework in government;
- Retention of the data residency requirement;
- Extension of the Act to cover additional public bodies;
- Changes to timelines and the right to anonymity; and

- Mandatory notification about significant privacy breaches.

Recent Amendments

Significant amendments to the Act were adopted on November 25, 2021, including:

- Updates to data-residency requirements;
- Modernized privacy provisions, including mandatory privacy-breach reporting;
- Introduction of an application fee for freedom of information requests; and
- Increased information sharing with Indigenous peoples, Indigenous cultural protections, and removal of non-inclusive language.

THE WORK OF THE COMMITTEE

On June 16, 2021, the Legislative Assembly appointed a Special Committee to review the *Freedom of Information and Protection of Privacy Act* pursuant to section 80 of the Act.

Bill 22, the *Freedom of Information and Protection of Privacy Amendment Act, 2021* was introduced on October 18, 2021 and received royal assent on November 25, 2021. The Special Committee's review looked at the Act as a whole, which included the fall 2021 amendments.

Briefings

On February 3, 2022, Members received briefings from the Ministry of Citizens' Services, the Ministry responsible for the Act, and the Office of the Information and Privacy Commissioner for BC, the statutory office responsible for overseeing the Act. Officials briefed the Special Committee on the purpose of the Act, the recent amendments to the Act, and the status of the 2016 Special Committee's recommendations. On April 7, 2022, the Information and Privacy Commissioner presented his recommendations.

Public Consultation

To support its review, the Special Committee invited British Columbians to share their views on the Act. Registration for presentations opened on January 26, 2022 and meetings were held March 4, 15 and 16, 2022. Written submissions were accepted between February 23, 2022 and March 31, 2022.

To advise the public of the consultation, the Special Committee issued province-wide news releases, placed advertisements in local and multicultural newspapers and online, communicated using social media, and reached out directly to stakeholders. In total, the Special Committee heard 23 presentations and received 74 written submissions. A list

of the individuals and organizations that presented and/or provided written submissions is available in Appendix B.

The Special Committee carefully considered all input received during its deliberations to inform its recommendations.

Meetings Schedule

Second Session, 42nd Parliament

August 23, 2021: Organization

January 21, 2022: Planning

February 3, 2022: Briefings

Third Session, 42nd Parliament

February 17, 2022: Organization/ Planning

March 4, 2022: Presentations

March 15, 2022: Presentations

March 16, 2022: Presentations

April 7, 2022: Briefings

April 29, 2022: Deliberations

May 4, 2022: Deliberations

May 6, 2022: Deliberations

May 11, 2022: Deliberations

May 13, 2022: Deliberations

May 17, 2022: Deliberations

May 19, 2022: Deliberations

May 26, 2022: Deliberations

June 2, 2022: Deliberations; Adoption of Report

FREEDOM OF INFORMATION: WHAT THE SPECIAL COMMITTEE HEARD

Freedom of Information Framework

Part 2 of the Act outlines the public's right of access to records held by British Columbia's 2,900 public sector organizations.

Exceptions

The right to access records held by public bodies is limited by exceptions, as outlined in sections 12-22.1 of the Act. Some exceptions are mandatory, in which case the public body must refuse to disclose the requested information, while other exceptions are discretionary. Most input the Committee received on this issue related to exceptions for Cabinet and local public body confidences (section 12), policy advice or recommendations (section 13), and legal advice (section 14).

Section 12

Section 12 includes a mandatory exception that requires public bodies to refuse to disclose information that would reveal the substance of deliberations of the Executive Council (Cabinet) or any of its committees. The exception does not apply to a record that has been in existence for 15 or more years and in other limited circumstances outlined in subsection 12 (2).

Several organizations and individuals, including the Information and Privacy Commissioner, objected to this being a mandatory exception and suggested that there be discretion to release some records where doing so is in the public interest. Others such as the Canadian Centre for Policy Alternatives noted that section 12 is too broad and should not apply to background materials. In this regard, the Centre for Law and Democracy and Stanley Tromp stated that it would be useful to clarify that the exception only covers advice or recommendations if the release of records would reveal the substance of deliberations of Cabinet.

The Canadian Centre for Policy Alternatives noted that in Nova Scotia's freedom of information legislation, the parallel exception is discretionary, and records that are withheld must be released after 10 or more years instead of after 15 years. Both the Canadian Centre for Policy Alternatives and the Information and Privacy Commissioner for BC highlighted Newfoundland and Labrador's access to information legislation, in which the Clerk of the Executive Council has discretion to disclose Cabinet records that would reveal the substance of deliberations of Cabinet, where they are satisfied the public interest in disclosing the information outweighs the reason for withholding it. The Information and Privacy Commissioner was of the view that Cabinet itself—rather than the Clerk—should decide on whether its records can be disclosed, given the unique nature of Cabinet confidences.

Section 13

Section 13 is a discretionary exception that allows public bodies to refuse to disclose information that would reveal policy advice or recommendations developed by or for a public body or a minister.

According to the Information and Privacy Commissioner, this provision has been interpreted in a manner that has eroded the public's right of access and gone beyond what the legislation intended. He pointed to several court decisions that have broadened the interpretation of the phrase "advice and recommendations," extending it to include factual information in certain circumstances, and recommended that the Act be amended to clarify a narrower meaning.

Several organizations and individuals raised similar concerns that exceptions under section 13 have expanded over time to prevent the disclosure of too many records. Stanley Tromp and the Centre for Law and Democracy suggested that section 13 should be limited by a harm test, in which information

could only be withheld where its disclosure would harm the development or success of a policy or threaten the free and frank provision of advice. The Centre for Law and Democracy was also of the view that most information should be disclosed once the deliberative process has concluded.

Section 14

Section 14 is a discretionary exception that allows public bodies to refuse to disclose information that is subject to solicitor-client privilege.

The Information and Privacy Commissioner and Vincent Gogolek raised the BC Supreme Court decision in *Richmond (City) v. Campbell*, 2017 BCSC 331, which held that a public body can refuse to disclose information under common law settlement privilege. As a result, information that was previously released—such as severance amounts paid by public bodies—is now routinely withheld. The Information and Privacy Commissioner recommended that the Act be amended to clarify that public bodies may only rely on its specific exceptions to refuse disclosing information, while Vincent Gogolek recommended section 14 be amended to clarify it does not extend to records protected by settlement privilege.

Stanley Tromp argued that section 14 is overapplied to include legal advice provided during the policymaking process. Similarly, the Centre for Law and Democracy suggested that section 14 be narrowed to allow records to be withheld only where lawyers provide legal advice to government rather than more general policy or program advice. On the other hand, the Law Society of British Columbia noted its concern that section 14 is a discretionary exception, and recommended that it be made a mandatory exception given that solicitor-client privilege is a principle of fundamental justice.

Special Interests

The British Columbia Lottery Corporation noted the unique circumstances of crown corporations, in which competitors can benefit from acquiring sensitive commercial information. In particular, the Corporation argued that section 17, which allows a public body to refuse to disclose information that would be harmful to financial or economic interests, does not adequately protect it from releasing sensitive commercial information. They also suggested that section 21, which requires a public body to refuse to disclose information that would be harmful to the business interests of a third party, should be broadened to include a refusal to disclose unsubstantiated information.

The BC Ferry & Marine Workers' Union and the BC Teachers' Federation expressed that some sections of the Act allow employers to withhold information that is important to labour unions during collective bargaining processes. The BC Ferry & Marine Workers' Union further noted that refusals to disclose records under section 19, which allows public bodies to withhold information that could be harmful to individual or public safety, sometimes prevents the union from receiving critical information about infrastructure related to health, safety, security equipment and staffing on vessels.

The Law Society of British Columbia noted that section 15, which allows a public body to refuse to disclose information that could harm a law enforcement matter, does not sufficiently permit it to withhold sensitive information related to investigations that lead to disciplinary proceedings involving a penalty or sanction. As such, they recommended expanding the definition of "law enforcement" under the Act to include proceedings or investigations conducted by a professional governing body.

Public Interest Disclosure

Section 25 of the Act specifies that information must be disclosed without delay if it is in the public interest to do so—regardless of whether a request has been made—where it is about a risk of significant harm to the environment or to the health and safety of the public or a group of people, or where it is clearly in the public interest.

Nicole Duncan was of the view that section 25 is not adequately being considered by public bodies. Duncan noted that section 25 applies despite any other provision of the Act, and as such, the public interest should be considered on a case-by-case basis after a public body has established that an exception applies. Duncan further argued that where consideration of section 25 is undertaken, there is often an unnecessarily high bar applied in determining whether disclosure is in the public interest. Similarly, the Centre for Law and Democracy noted that public bodies should disclose requested information whenever it is in the public interest to do so.

Nicole Duncan and Michael James suggested that the Information and Privacy Commissioner is applying too high of a threshold when reviewing inquiries about the application of section 25. Duncan noted that several orders of the Commissioner found that paragraph 25 (1) (b), which requires disclosure of information if it is clearly in the public

interest, did not apply, and concluded that the provision is being interpreted to include a requirement for temporal urgency and compelling need. Similarly, James suggested that the Commissioner has incorrectly pointed to terms such as “without delay” and “significant harm” in setting the threshold for when section 25 applies. Stanley Tromp noted that in a 2013 investigation report, the Information and Privacy Commissioner recommended that the provincial government amend section 25 by removing the requirement for temporal urgency, thereby creating a mandatory obligation for public bodies to disclose information of a non-urgent nature that is clearly in the public interest.

Scope

The Act covers more than 2,900 public bodies in BC, including provincial ministries and local public bodies. Schedule 2 lists additional bodies, including agencies, boards, and commissions, which are subject to the Act.

Legislative Assembly of British Columbia

Several organizations and individuals recommended that the Legislative Assembly be subject to the Act. The Canadian Centre for Policy Alternatives, Vincent Gogolek, and the Information and Privacy Commissioner all referred to a February 2019 letter from the Information and Privacy Commissioner, Merit Commissioner, and Ombudsperson calling for increased transparency and accountability of the Legislative Assembly. They specifically suggested that the administrative functions of the Legislative Assembly be included under the Act and calibrated to ensure that it does not apply to the constituency work of Members of the Legislative Assembly. As an example, the Information and Privacy Commissioner pointed to Alberta’s freedom of information legislation, which includes the “Legislative Assembly Office” in its definition of a public body, but does not include the offices of the Speaker or Members.

Private Bodies with Public Functions

Section 76.1 of the Act enables the Minister responsible for the Act to amend Schedule 2 by regulation to add additional entities that would fall under its scope. Amendments made in 2021 expanded the criteria under which entities could be added to Schedule 2.

The BC Freedom of Information and Privacy Association, Centre for Law and Democracy, and Stanley Tromp suggested

that the discretionary nature of the new authority falls short of the recommendations made by the previous two special committees, which were to ensure that any board, committee, commissioner, panel, agency or corporation created or owned by a public body is automatically covered by the Act. The Canadian Civil Liberties Association stated that BC should define the term public body using a criteria-based definition such as the one recommended by the House of Commons Standing Committee on Access to Information, Privacy and Ethics in 2016.

Several organizations and individuals noted one of the ways that public bodies have been able to avoid making information public is by creating subsidiary entities that are not covered by the Act. The student newspaper The Ubyyssey pointed to UBC Properties Trust and UBC Investment Management Trust as two subsidiaries of the University of British Columbia that are presently not covered by the Act. The BC Specific Claims Working Group further noted that subsidiary organizations can pose a barrier to First Nations trying to access records to substantiate claims.

The Ubyyssey and Stanley Tromp suggested student unions should be included under the Act. The BC Freedom of Information and Privacy Association and Canadian Association of Journalists expressed concern that the “Office of the Premier and Executive Council Operations” was removed from Schedule 2 in the 2021 amendments. Finally, Valerie Lipton argued that strata councils should fall under the Act so that owners do not have to file claims with the Civil Resolution Tribunal to access important information.

Indigenous Information

Rights of Indigenous Peoples

The Union of British Columbia Indian Chiefs noted that information rights are tied to human rights for First Nations, since they are required to produce a wide range of government records to substantiate their claims against the Crown. Further, both the Union of British Columbia Indian Chiefs and the BC Specific Claims Working Group noted that the *Declaration on the Rights of Indigenous Peoples Act* requires the Act be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and not create barriers to upholding First Nations’ human rights. The BC Freedom of Information and Privacy Association noted that section 18.1 requires the head of a public body to refuse

to disclose information if the disclosure could reasonably be expected to harm the rights of Indigenous peoples; however, they pointed out that although withholding the information is mandatory, there is no requirement that Indigenous peoples be informed that information was withheld under the section, and suggested that this falls short of the duty to consult outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

Access to Historical Records

The Union of British Columbia Indian Chiefs shared that hundreds of unresolved claims in BC continue to impact First Nations in many ways, and that having fulsome access to government records is essential to ongoing discussions. Both the Union of British Columbia Indian Chiefs and the BC Specific Claims Working Group identified that researchers rely on the Act to access thousands of records from government departments and agencies to substantiate claims against the Crown. The BC Specific Claims Working Group added that sections 14, 16, 21 and 22 of the Act are routinely relied upon to withhold information. In particular, they suggested that the requirement under paragraph 22 (2) (d) that public bodies consider whether disclosure of personal information will assist in researching or validating the claims of Indigenous peoples is too broad and fails to yield the necessary disclosure of records.

In addition, the BC Freedom of Information and Privacy Association noted that the tragic discovery of burial sites of Indigenous children at numerous former residential schools has further highlighted the need for access to historical records in advancing reconciliation. They added that withholding key historical records relating to residential schools presents a barrier to reconciliation.

Overrides

Subsection 3 (7) of the Act states that where there is a conflict between the Act and any other provincial statute, the Act prevails unless the other statute expressly provides that it overrides the Act.

The Information and Privacy Commissioner noted that more than 40 BC statutes now have provisions that override the Act in whole or in part. He argued that the overall effect is to weaken the breadth and coverage of the Act, and suggested that a mechanism is needed to periodically review the relevant provisions in other statutes to ensure they continue

to be necessary. Similarly, Stanley Tromp was of the view that there is currently no mechanism to review, update, or remove the high number of statutes that override the Act. The BC Freedom of Information and Privacy Association added that overrides should be carefully considered and repealed if the provisions are not justified.

The Information and Privacy Commissioner pointed favourably to Newfoundland and Labrador's access to information legislation, which lists provisions in other statutes that prevail over it and requires that the list be considered by a special committee during its statutory review of the legislation to determine whether the provisions are still required.

Freedom of Information Requests

Making Requests

The Ministry of Citizens' Services reported receiving more than 10,000 freedom of information requests in 2020-21, and that the average cost to process one request is \$3,000. The Ministry noted that the average annual cost to government for processing freedom of information requests is \$31 million.

Some individuals highlighted the importance of freedom of information requests. For example, the Independent Contractors and Business Association recounted to the Special Committee about using the freedom of information system to successfully uncover misspending or scandals, which has resulted in lasting policy change. Journalist Bob Mackin also recounted a long history of making freedom of information requests, and emphasized to the Special Committee that the information that reporters find is important for British Columbians.

User Experience

Several organizations and individuals identified challenges in navigating the freedom of information system. Stanley Tromp noted how the challenges of making a request can be daunting, including identifying the type and location of records, sending requests, and navigating the appeals process. Cameron Bell shared that it can be challenging to determine where to send a request, while the Canadian Centre for Policy Alternatives noted that requestors may be required to submit multiple requests to get the information they are seeking. Many individuals noted frustration that responses are often heavily redacted.

Section 6 of the Act details that the head of a public body must make every reasonable effort to assist applicants with an access request and respond to each applicant openly, accurately and completely without delay. Several organizations and individuals shared that responses to access requests are often returned stating that no records were found, and many highlighted the frustration of receiving such a response. The Wilderness Committee, an environmental advocacy organization, and Nicole Duncan suggested that employees of public bodies could do a better job of assisting applicants with clarifying their requests in order to obtain the desired information. On the other hand, the Law Society of British Columbia noted that overly broad requests from applicants make it difficult for a public body to fulfill its obligations under the Act, and proposed that applicants should be required to be more specific about the information they are requesting.

The Canadian Centre for Policy Alternatives pointed to a 2019 review of BC's freedom of information process completed by Deloitte, which included a number of technological, policy and process recommendations aimed at improving efficiency. The Centre also pointed to the 2020 report on access to information timelines by the Office of the Information and Privacy Commissioner, which suggested new technologies may improve efficiencies, but cautioned that these technologies must not be implemented at the expense of privacy or access rights.

Some journalists noted the particular issues they face when making requests for information. Bob Mackin shared that members of the media are often treated like adversaries by public bodies, while independent journalist Ina Mitchell noted that public bodies often ignore fact-checking requests. The Student Press Freedom Act Campaign explained that when a student journalist makes a freedom of information request, confidentiality is important to avoid possible reprisals from public bodies including school officials. They noted this is especially a concern with respect to smaller public bodies, like school boards, where student journalists interact closely with the authorities from whom they request information.

The Union of British Columbia Indian Chiefs told the Special Committee about the numerous barriers First Nations experience when attempting to obtain provincial government records through the freedom of information process. These barriers include prohibitive fees, the denial of requests for fee waivers, prolonged delays, the unreasonable use of exceptions

to disclosure, and widespread failures to create, retain and transfer records.

Cost for Public Bodies

The British Columbia Association of Police Boards advised the Special Committee that freedom of information requests are constantly growing in number, breadth, scope, and complexity, which is challenging for municipal police departments. They noted the particular challenges of individual requestors that submit multiple requests each month, as well as broad requests, and recommended that requestors be subject to a limited number of requests or a clear topic be required.

The Law Society of British Columbia noted its concern with the cost burden assumed by public bodies in order to ensure compliance with the Act. In particular, the Law Society explained that most professional regulatory bodies receive no public funds, and as such have limited revenue to subsidize the cost of meeting obligations under the Act. It noted a 2009 order from the Information and Privacy Commissioner, which disallowed several costs originally charged to the applicant by the Law Society.

Fees

Application Fee

Section 75 of the Act was amended in 2021 to allow public bodies to charge an application fee for making a freedom of information request, which is currently set by regulation at \$10. The Ministry of Citizens' Services told the Special Committee that the application fee was introduced as a way to encourage applicants to provide more specificity in their requests. The legislation does not permit an application fee to be charged where an applicant requests their own personal information, and Indigenous Governing Entities are presently exempted by the Ministry of Citizens' Services from paying the application fee.

Many organizations and individuals expressed opposition to the new application fee. The Fraser Valley Current stated that the goal of the application fee seems to be to deter frivolous requests; however, there is no way to deter frivolous requests without also deterring important ones. Similarly, the Canadian Association of Journalists advised that the government's intended aim to disincentivize repetitious, vexatious, or politically-motivated requests could have been dealt with in a more targeted manner, rather than by charging an application

fee. Yves Mayrand further noted that section 43 of the Act already permits the Information and Privacy Commissioner to authorize public bodies to disregard requests for information that are deemed frivolous or vexatious.

The Centre for Law and Democracy shared that application fees do not align with international best practices and have a chilling effect on requestors. Vincent Gogolek and Stanley Tromp similarly told the Special Committee that several other jurisdictions have eliminated application fees in recent years. Some organizations and individuals noted that often several requests for information are required for one particular area of inquiry, which would each be subject to the application fee. Finally, the BC Specific Claims Working Group noted that the exemption of the application fee for Indigenous Governing Entities must be explicitly included in the legislation to ensure that a fee will not be imposed in the future.

Impact of the Application Fee

Several organizations and individuals noted concern about the impact that the application fee would have on particular groups. Keith Reynolds and the Canadian Centre for Policy Alternatives suggested that information from the government's assessment of the impact on groups such as low-income individuals and the media should be made public. The BC Freedom of Information and Privacy Association noted that the application fee disproportionately affects students, smaller media outlets, and marginalized groups. Maureen Juffs told the Special Committee that as a low-income individual, the application fee limits the ability to make freedom of information requests.

The BC and Yukon Community Newsmedia Association suggested that the application fee could hinder the ability of community media outlets to report on local issues, while The Fraser Valley Current noted the impact of having to pay several application fees in order to obtain comparable information from the different municipalities covered by the media outlet. Finally, the British Columbia Teachers' Federation and the Student Press Freedom Act Campaign both noted the impact of the fee on student journalists who work with limited budgets. The Teachers' Federation further noted that the application fee creates a barrier for individuals and communities wishing to access information about the public education system.

Processing Fees

Section 75 of the Act permits a public body to charge fees for certain services required to fulfill a request. The public body must provide the applicant with a written estimate of the fees before providing the services, and has discretion to waive fees where the applicant cannot afford them or where the record relates to a matter in the public interest.

The Wilderness Committee recounted an experience filing an access to information request where they initially received a reduction in the processing fee for being in the public interest, only to be later reassessed at a higher amount which resulted in the organization dropping the request. The Centre for Law and Democracy noted that some of the prescribed fees for services go beyond the actual costs incurred by the public body, and suggested hourly charges for locating records effectively penalize requestors for poor record management practices. The Canadian Civil Liberties Association suggested that the fee waiver for requests that are in the public interest should be automatically applied, rather than only upon the applicant's request. Stanley Tromp pointed to a 2015 federal court decision that the federal government can no longer charge fees for the search and processing of electronic records, and suggested the same principle should be included in the Act.

The Union of British Columbia Indian Chiefs and the BC Specific Claims Working Group explained that high processing fees and the denial or requests for fee waivers are barriers First Nations experience when attempting to obtain provincial government records through freedom of information requests. The BC Specific Claims Working Group added that because hundreds and often thousands of documents are required for the purposes of substantiating historical claims and grievances, costs can amount to thousands of dollars, which is beyond the resource capacity of many First Nations.

Timelines

Legislated Deadlines

Section 7 of the Act sets out a time limit for public bodies to respond to requests for information, which is 30 business days unless an extension is authorized. The Ministry of Citizens' Services reported that it took an average of 58 days to process freedom of information requests in 2020-21 and that there was an on-time response rate of 85 percent.

The Centre for Law and Democracy, the Canadian Centre for Policy Alternatives, and Stanley Tromp noted that the Act's time limit of 30 business days is longer than many other jurisdictions. The Centre for Law and Democracy added that because the Act does not require public bodies to respond as soon as possible, the result is that they will wait until the end of the time limit even for a simple request where it is possible to respond more quickly.

Several organizations noted concerns about delays beyond the legislated 30-day time limit. The Ubysey shared that it is rare to have a freedom of information request completed within 30 days. The Union of British Columbia Indian Chiefs noted that prolonged delays are one barrier First Nations experience when attempting to obtain records from the government, adding that there are instances where it took more than two years for records to be released. Similarly, the BC Specific Claims Working Group indicated that its researchers are regularly asked to waive legislated timelines, resulting in serious delays.

The Canadian Civil Liberties Association advised that the public is deprived of an opportunity to meaningfully participate in government when access to information is delayed until after a decision has already been decided or implemented, or until information has become out-of-date or irrelevant. Similarly, Nicole Duncan noted that long delays prevent the public from engaging in advocacy efforts in a timely fashion.

Extensions

Section 10 of the Act permits public bodies to extend the response time to a request for up to 30 days for specific reasons, including where the applicant provides consent. The BC Freedom of Information and Privacy Association explained that extensions are not authorized because of systemic issues, employee vacations, or because the public body does not allocate sufficient resources to fulfill the request. Many organizations noted that extensions have become commonplace. For example, the BC Freedom of Information and Privacy Association indicated that extensions seem to be sought routinely, rather than in limited circumstances. The Wilderness Committee advised that they have never made a freedom of information request where the government did not ask for an extension, and noted several experiences where the government used an extension without seeking the organization's consent. Similarly, The Ubysey shared that

the University of British Columbia has stopped requesting extensions from the applicant, and instead just automatically extends the deadline. The Canadian Civil Liberties Association explained that it is deeply troubled by the Information and Privacy Commissioner's 2020 report card on timeliness, which found that over a three-year period government extended the response time for an access request without any legal right to do so in more than 4,000 cases. Others, such as the Canadian Centre for Policy Alternatives, noted that extensions are being taken without providing a reason, and cited a lack of oversight.

Open Government

Culture of Transparency

Several organizations and individuals stressed the importance of freedom of information laws in systems of democratic governance. The Canadian Civil Liberties Association emphasized that access to government records is necessary to counter the proliferation of misinformation and disinformation, and as a pre-condition for citizens to make informed choices. Bob Mackin and Vincent Gogolek further noted that secrecy of information can undermine democracy and lead to extremism. Similarly, Sean Holman highlighted that conspiracy theories and extremist ideologies can arise when citizens do not have access to information held by the government, and added that access to government information is necessary to allow people to make rational and empathetic decisions in exercising their democratic rights. Nicole Duncan advised the Special Committee that open government promotes accountability, and improves understanding of policies, decisions and actions taken by government. Duncan added that it also allows the public to engage in meaningful public debate about issues and possible solutions. The BC Freedom of Information and Privacy Association noted the practical benefits of increased government transparency, including reducing some of the issues that frustrate both requestors and public bodies in the freedom of information system.

Current Culture

The BC Freedom of Information and Privacy Association explained that public bodies have a culture of secrecy by default, in which there is a focus on the risks associated with releasing records. Similarly, Yves Mayrand suggested there is a culture of treating freedom of information requests

as obstacles, with the objective being to release as little information as possible. Mayrand noted that this culture leads to practices aimed at limiting the amount of information that could be subject to a freedom of information request. Sean Holman stated that an increased desire to control public messaging has led political bodies to default towards secrecy, while the Fraser Valley Current noted the near impossibility of getting an interview with a representative from the provincial government as one factor that leads journalists to make freedom of information requests. The Student Press Freedom Act Campaign noted that student journalists have faced questions about their right to use the freedom of information system and have been discouraged from making requests.

Some organizations and individuals highlighted the challenges with accessing information about the COVID-19 pandemic. The BC Freedom of Information and Privacy Association noted that the pandemic has led to a broad reliance on public health data, and that as a result, access to timely, reliable government information about the virus and the measures being implemented has been critical. The BC and Yukon Community News Association noted that its members reported that even factual information seemed to be tightly controlled, with privacy concerns often cited as the reason for withholding information. John Ehrlich and John Perone expressed concern about the lack of transparency around information related to the pandemic, with Lynne Bourbannais adding that this has increased distrust of the government.

With these concerns in mind, the Special Committee heard that a culture shift is required when it comes to freedom of information and government transparency. The BC Freedom of Information and Privacy Association noted that this culture change needs to begin with senior leadership articulating their support for the access to information system, and noted that increased training and support is necessary for employees. Similarly, Stanley Tromp suggested that the Premier could provide a public order to the public service on the importance of open government, similar to an executive order issued by US President Barack Obama upon taking office in 2009. Yves Mayrand suggested several ways that the government could promote the importance of openness and transparency, including adding related expectations to ministerial mandate letters, budget documents, and service plans, and reporting on progress in annual reports. Finally, the BC Freedom of Information and Privacy Association suggested that the annual report on the administration of the Act, which

is required under section 68, should be tabled each year rather than every few years as has been the recent practice.

Duty to Document

The Information and Privacy Commissioner shared that in order to have a meaningful freedom of information system, public bodies must have robust information management systems that ensure records are created and retained in a way that they can be located and retrieved. Some organizations and individuals pointed to challenges that prevent public bodies from sufficiently documenting information. For example, Stanley Tromp noted the issue of “oral government,” whereby government officials do not create or preserve records of their decisions, and added that the use of private messaging services poses a challenge in retrieving records. Similarly, the BC Freedom of Information and Privacy Association noted that records need to be created where government decisions are carried out by phone, private messaging, or videoconferencing, and added that the adoption of new technologies during the COVID-19 pandemic is exacerbating this issue. The Union of British Columbia Indian Chiefs and the BC Specific Claims Working Group acknowledged that the failure to create and retain records is one of the barriers faced by First Nations in accessing government information to substantiate their claims.

The *Information Management Act* came into force in 2016 and applies to all ministries, courts in a limited way and designated public sector organizations with approved records schedules under the *Document Disposal Act*. It was amended in 2019 to add a requirement for the head of a government body to ensure that appropriate systems are in place to create and maintain adequate records of decisions. In addition, the 2021 amendments to the *Freedom of Information and Protection of Privacy Act* make it an offence to destroy or alter a record to avoid complying with a request for access. However, the Information and Privacy Commissioner pointed out that there is no independent oversight for the *Information Management Act*, and suggested that the recent amendments do not go far enough in ensuring a duty to document. He also noted that the *Information Management Act* applies primarily to government ministries, rather than to all public bodies, and recommended that in order to address this a duty to document be included in the *Freedom of Information and Protection of Privacy Act*.

For similar reasons, several other organizations and individuals also called for the *Freedom of Information and Protection of Privacy Act* to be amended to require a duty to document. The Canadian Centre for Policy Alternatives, the BC Freedom of Information and Privacy Association, and Vincent Gogolek expressed concern that the *Information Management Act* does not have independent oversight, leaving public bodies subject to the *Information Management Act* unaccountable for establishing strong records management systems. Gogolek also noted that there is a lack of clarity on what can be considered a transitory record, resulting in too many records not being properly retained. The BC Freedom of Information and Privacy Association and Stanley Tromp expressed that the provisions in the *Information Management Act* pertaining to creating and maintaining records of government decisions fall short of a true duty to document. Both suggested that such a provision should be included in the *Freedom of Information and Protection of Privacy Act*. Finally, both the BC Freedom of Information and Privacy Association and the Canadian Civil Liberties Association pointed to New Zealand's requirement that every public body "create and maintain full and accurate records of its affairs" as a model of legislation related to a duty to document.

Legislative Process

Several organizations raised general concerns about the 2021 amendments to the Act. The BC Teachers' Federation emphasized that the amendments were a step backward for openness and accountability, and a missed opportunity to improve the information rights of British Columbians. The Canadian Association of Journalists referred to the amendments as an assault on access to information rights. The Centre for Law and Democracy suggested that the amendments weakened the Act and the Independent Contractors and Businesses Association expressed strong opposition to the amendments.

The Ministry of Citizens' Services told the Special Committee that the recent amendments to the Act were the result of several years of stakeholder engagement, including roundtables with key stakeholder groups, public surveys, and outreach to Indigenous organizations and First Nations leaders. However, several organizations and individuals expressed concern with the process of making the amendments. The Centre for Law and Democracy and the BC Freedom of Information and Privacy Association noted that the amendments undermined the work of the Special Committee

by being enacted while it was undertaking its examination of the Act, while Yves Mayrand noted that, despite the timing of the amendments, the Special Committee should not feel constrained in making its recommendations. The Canadian Centre for Policy Alternatives noted that some of the impacts of the recent amendments to the Act remain unknown because they will be implemented through regulations that have not yet been made public. Finally, the Union of British Columbia Indian Chiefs and the BC Specific Claims Working Group expressed concern that First Nations were not adequately consulted about many of the amendments made to the Act.

Proactive Disclosure

Sections 71 and 71.1 of the Act provide for categories of records to be proactively disclosed to the public. In particular, section 71 requires the head of a public body to establish categories of records to be made available to the public without a request. Section 71.1 enables the Minister of Citizens' Services to establish categories of records to be made available by government ministries without a request. According to the Ministry of Citizens' Services, 3,521 records were proactively disclosed in 2020-21 under ministerial directives.

Several organizations and individuals advocated for further proactive disclosure of records. Yves Mayrand highlighted that proactive disclosure makes practical sense because it could help to reduce the amount of vetting that is required before records are released in response to requests for information. The Independent Contractors and Business Association provided an example of documents that were proactively disclosed until recently, requiring the organization to now file regular freedom of information requests. Several organizations and individuals also noted preferable proactive disclosure laws in other jurisdictions, such as New Zealand, Hamburg, and New South Wales. The British Columbia Association of Police Boards cautioned the Special Committee that increased proactive disclosure would likely not work for police departments, as they handle large amounts of information that may impact an investigation, and which would have to be reviewed prior to disclosure.

The Ubyssy noted to the Special Committee that even when information is proactively released, it is often difficult to access. They added that if information is proactively released effectively, it needs to be made available in a way that is

transparent, clear, and organized so that it is easy to find. On the other hand, the BC and Yukon Community Newsmedia Association noted that its members include data journalists who have the skills and tools to comb through large releases of information. The Fraser Valley Current and the Centre for Law and Democracy both stated that it would be impossible to eliminate the need for freedom of information requests through proactive disclosure because of the sheer volume of information and documents that public bodies generate.

Publication Schemes

Publication schemes require public bodies to proactively disclose specific records or types of records. Nicole Duncan suggested that such schemes can focus public bodies on routinely making classes of information available to the public, which reduces costs and increases public trust.

Several organizations and individuals included recommendations for types of records that could be included in publication schemes. For example, the Canadian Centre for Policy Alternatives and the BC Freedom of Information and Privacy Association recommended that freedom of information requests should regularly be analyzed to identify records that are routinely requested and released, and that could more appropriately be released proactively. Similarly, the BC and Yukon Community Newsmedia Association was of the view that the Information and Privacy Commissioner should have the ability to require proactive disclosure of documents that are regularly requested.

The BC Freedom of Information and Privacy Association further suggested that the provincial government could focus on proactive disclosure of records from the ministries that receive the majority of freedom of information requests. Nicole Duncan recommended that factual material, such as polls, surveys, appraisals, economic forecasts, or environmental impact statements—which are required to be released under subsection 13 (2)—be proactively disclosed. The Ubysey advised the Special Committee that documents related to public spending and land use are examples of records that should be made public and easily accessible, while the Fraser Valley Current suggested that audits are another example of documents that should be proactively disclosed.

The BC Construction Association noted that the release of information related to public procurement processes for construction services is currently inconsistent. While there

are guidelines for government ministries, other public bodies do not have documents to guide the release of procurement information. The organization further noted that a lack of transparency and timely information increases risks and costs for bidders, and called for the Act to establish construction services as a specific category of records required to be proactively released for every public project. Similarly, Thomas Martin shared that access to detailed information about public procurement processes is important as it allows the public to evaluate the fairness of the process. He added that currently, freedom of information requests are the only way to gather information about directly-awarded or unreported contracts. Martin also called for the Act to require proactive disclosure of government procurement, including evaluations of proposals, awarded contracts, and actual payments.

Sections 71 and 71.1

The BC Freedom of Information and Privacy Association highlighted that many public bodies do not adhere to the proactive disclosure requirement under section 71, and suggested that government implement the recommendations from the Information and Privacy Commissioner's 2020 investigation into proactive disclosure practices related to section 71. Nicole Duncan noted that both section 71 and section 71.1 leave discretion over establishing categories of records available without request to the head of the public body or to the Minister responsible for the Act, and do not allow for sufficient oversight by the Commissioner. Similarly, Yves Mayrand noted concerns about the implementation of these sections, given that heads of public bodies have discretion over establishing categories of information for proactive release and publicizing which information is available in these categories. The Information and Privacy Commissioner also noted that section 71.1 could be improved if the Minister responsible for the Act could issue directives for other public bodies, in addition to provincial ministries.

PRIVACY: WHAT THE SPECIAL COMMITTEE HEARD

Personal Information

One of the purposes of the Act is to protect personal information by preventing unauthorized collection, use or disclosure of personal information by public bodies. Both the Canadian Civil Liberties Association and the BC Freedom of Information and Privacy Association noted that privacy is a fundamental right in Canada. The BC Freedom of Information and Privacy Association further suggested that the Charter of Rights and Freedoms, along with the federal *Privacy Act* and British Columbia's privacy legislation, work together to protect privacy. They highlighted several recent high-profile privacy breaches of organizations that were handling public or semipublic data, including the Cambridge Analytica scandal, the LifeLabs data breach, and the Clearview AI facial recognition database. The Canadian Civil Liberties Association explained that currently under the Act, public bodies have the authority to collect and hold significant amounts of personal and impactful information for the purposes of providing public services. They noted that the richness of these data sets makes them both an invaluable tool for public bodies and a high-value target for bad actors. As such, they recommended that privacy be recognized as a human right in the Act.

Protecting Personal Information

De-identified information is comprised of personal information that has had all personal or identifying characteristics removed. The Canadian Civil Liberties Association noted that the Act protects personal information, which is defined as information about an "identifiable individual"; however, it is unclear if de-identified data is included. They pointed to several examples in which supposedly de-identified or anonymized information had personal information extracted using various mathematical methods. While de-identification, correctly implemented, does provide a form of privacy protection, the Canadian Civil Liberties Association contends

that it should not be relied upon in lieu of privacy law. They recommended that the Act be amended to include protections for de-identified data and clear definitions of terms related to the process.

The BC Teachers' Federation noted that surveillance technologies are increasingly utilized for safety measures in an educational environment. They drew attention to a BC school district placing video surveillance on the interior and exterior of school buses, thus implementing mobile surveillance of students. They pointed out that UNICEF outlines several principles for data collection of youths, which include ensuring that surveillance of youths is proportional and limited. They noted that the current landscape and level of collection in public education necessitates strong privacy legislation with clear guidance related to the use of surveillance technologies in public education.

Keegan Clark noted that control over one's information is paramount, and any invasion of personal privacy is unreasonable. As such, Clark suggested that the circumstances under section 33 in which a public body is not required to obtain consent before disclosing personal information are too broad and grant public bodies too much authority.

Finally, the Information and Privacy Commissioner shared that unlike the *Personal Information Protection Act*, the *Freedom of Information and Protection of Privacy Act* does not clearly set out when public bodies are required to correct personal information, which results in uncertainty for individuals when trying to correct inaccurate or incomplete information. As such, the Commissioner recommended that section 29 of the Act be amended to include a requirement that public bodies correct personal information when an individual requests that their personal information be corrected, if the public body is satisfied on reasonable grounds that the request should be implemented.

Privacy Management

The Ministry of Citizens' Services stated that one of the purposes of the recent amendments was to better align with international best practices. This included a provision, to be set by regulation, requiring that public bodies implement a privacy management framework for their data. The framework will require public bodies to demonstrate knowledge and understanding of their obligations under the Act. As an example, a privacy management framework may require demonstrating privacy policies, appointing a privacy compliance officer and conducting privacy impact assessments. They noted that the Act applies to a range of public bodies of varying sizes, so regulations will determine a proportional privacy framework dependent on factors such as the size of the organization and the sensitivity of the data managed. The BC Teachers' Federation and BC Tech Association expressed their support for the requirement for a privacy management framework and suggested that public bodies should share best practices.

The BC Teachers' Federation also noted a concern about the limited privacy training for public sector employees, which has become more pronounced during the COVID-19 pandemic. They highlighted how multiple digital tools have been leveraged to allow for online education, yet only a minority of its membership reported receiving adequate privacy training. They emphasized the need for strong legislation reinforced by accessible guidance for privacy management, and suggested that privacy training be prescribed in the Act for all individuals who collect, use or disclose information.

i-SIGMA, a data destruction and information management association, was also pleased with the introduction of a privacy management framework, and encouraged all organizations to publicly disclose their privacy policies. They pointed out, however, that there is no requirement under the Act to destroy data that is no longer needed, which is an important consideration in the lifecycle of data. As such, i-SIGMA recommended stronger rules around data destruction, such as those contained in the *Personal Information Protection Act*, and a requirement for public bodies to disclose their privacy policies. The BC Teachers' Federation also advised that section 31 of the Act requires public bodies to ensure that information is retained for at least one year after being used; however, no limits on data retention are outlined. They were of the view that the right to

be forgotten should be a guiding principle for protecting the privacy of students.

New Technologies

The Information and Privacy Commissioner advised that the 2021 amendments to the Act provided much needed reforms for modernizing the Act and its privacy protection provisions. At the same time, he noted that the sophistication of technology brings new issues such as artificial intelligence, data-linking, facial recognition technology and big data. The Commissioner added that these technologies already impact the lives of British Columbians and are integrated into the public sector, and the Act needs to better address these issues.

Biometrics

Biometrics are measurements or biological data about human beings which can be used to verify identity. The Canadian Civil Liberties Association highlighted that several recent high-profile privacy breaches have involved highly sensitive biometric information. They noted that biometrics are integrated into many aspects of public services, and that as police departments and other public bodies increasingly use facial recognition technology on both suspects and the public at large, the level of integration has seen a concerning increase in recent years. The Canadian Civil Liberties Association drew particular concern to the issue of 'function creep' in which the intended purpose of a technology gradually extends for the purposes of convenience or practicality. As an example of function creep, they pointed to ICBC's sharing of facial recognition data with the Vancouver Police Department following the 2011 riots. They noted that in other jurisdictions, legislation provides that no private entity may collect, store, or use biometric identifiers or information without providing prior notice to and obtaining a written release or consent from the data subject. As such, the Canadian Civil Liberties Association recommended biometric data be codified into the Act as personal information which requires express consent before collecting, using or disclosing.

Data-Linking

Data-linking involves linking data about an individual in two or more data sets. The Information and Privacy Commissioner noted that the risks to data-linking are considerable, including security concerns, risks of profiling and its potential to produce inaccurate or misleading data. The Canadian Civil

Liberties Association made a similar assessment and noted that such initiatives are especially concerning because of the types and quality of data collected and held by public bodies. They added that the commodification of data and scale of public-private surveillance partnerships today have exceeded the upper limits of the Act's legislative design.

The Information and Privacy Commissioner stated that the 2021 amendments to the Act clarified the definition of data-linking and data-linking initiatives; however, the requirement for the Commissioner to review the data-linking initiative's privacy impact assessment was removed. The Commissioner added that other jurisdictions, including Saskatchewan and Ontario, have introduced data-linking legislation which requires transparency about data-linking activities, technical safeguards, accuracy requirements for data and oversight by a regulator. He added that BC has yet to implement new regulatory rules that would guide data-linking initiatives and he recommended that his office be consulted on developing forthcoming regulations to address transparency, privacy protections and oversight for these initiatives.

Education Tools

The BC Teachers' Federation raised concerns about the privacy implications resulting from the increased use of education technologies during the pandemic. These technologies, which may include learning management systems, student information systems, communication and production tools, apps and videoconferencing technologies, can collect a wide range of information about students. They noted that these technologies were deployed rapidly at the beginning of the pandemic to ensure that students could continue their education from home. They added that online learning requires the collection, storage, use, and disclosure of personal information for lessons, evaluation and class activities. Teachers were required to handle new information in a manner consistent with the Act but many teachers were not provided additional privacy training prior to using these tools, and many may have assumed that software chosen and implemented in the education sector is privacy compliant. However, a recent federal privacy investigation demonstrated that commercial software used in education is not always privacy compliant. As a result, the BC Teachers' Federation recommended that BC establish a landscape of strong provincial legislation and guidance for the use of educational technologies.

Artificial Intelligence

Artificial Intelligence (AI) is a catch-all term that encompasses computer programs to facilitate automated decision-making systems, algorithmic sorting, and machine learning. Technologies that facilitate these programs have advanced significantly since the last review of the Act. The Act has a mechanism related to potential issues associated with automated processing found in subsection 42 (1), which grants the Commissioner the power to comment on the implications of automated systems for the collection, storage, analysis or transfer of information.

The Information and Privacy Commissioner shared that rapid advancements in automated decision-making systems, including those that employ artificial intelligence and data driven tools, can improve services by analyzing large amounts of data to find patterns, look for insights, and make recommendations. He also highlighted that the risks to privacy and other fundamental rights are such that enhanced protections are necessary because AI does not simply process information faster, it processes it differently and in a way that is not always clear.

The Canadian Civil Liberties Association noted that the use of AI by public bodies ranges from relatively limited applications, such as automated virtual assistants, to highly sophisticated systems relying on machine learning algorithms, such as predictive policing systems. Both the BC Freedom of Information and Privacy Association and the Canadian Civil Liberties Association were of the view that the Act does not adequately address the privacy implications of artificial intelligence, with the Canadian Civil Liberties Association adding that the Act does not currently provide individuals meaningful transparency or control, nor does it give individuals any right to object to decisions made about them by automated decision-making systems.

The Information and Privacy Commissioner pointed to Quebec's recently amended privacy legislation and the now-defunct federal draft private sector privacy legislation which address the use of automated decision-making systems. He recommended a model similar to the one used by Quebec that requires notification that automated processing will be used to make a decision, disclosure of the criteria used to make the decision, and an ability for individuals to submit objections and request a review.

Data Security

In 2021, the Act was amended to allow for the storage of data outside Canada. Previously, public bodies were required to ensure all storage and access to information was restricted to within Canada. The Ministry of Citizens' Services stated that public sector organizations found the provision to be an exceptionally challenging requirement because of the limited number of tools available domestically. They noted that the data residency provision was no longer reflective of how the technology sector works today, and added that the new amendments are more in line with other jurisdictions in Canada. The Ministry also noted that BC maintains regulation-making authority on all cross-border public sector data transfers and that the transfers must include a risk assessment for disclosure and storage of sensitive personal information outside Canada, and all risks identified in the assessment must be appropriately mitigated.

Several organizations and individuals expressed concerns about the change to data residency provisions. The Canadian Civil Liberties Association and Maureen Juffs raised the privacy implications of storing data in other jurisdictions, while the Canadian Centre for Policy Alternatives noted that data residency provisions have been included in the Act since 2004, following a report by the Office of the Information and Privacy Commissioner which concluded that the *Patriot Act* represented a risk to data stored abroad and recommended that the Act prohibit personal information from being stored or accessed outside of Canada. Nicole Duncan noted that because BC's privacy laws do not apply in other jurisdictions, British Columbians will be left with little recourse in the case of inappropriate collection, use or disclosure of their personal information outside Canada. The BC Freedom of Information and Privacy Association added that based on its own study, 73 percent of respondents wanted to maintain data residency provisions in BC, but the Association also recognized that removal of the data residency requirement is unlikely to be reversed and suggested efforts must focus on maximizing data security. The Canadian Civil Liberties Association recommended that the Act only permit data transfers to jurisdictions with substantially similar privacy legislation or if an individual consents to the transfer, and suggested that data residency provisions be restored until detailed measures to protect information abroad have been implemented. The Council of Canadian Innovators noted its concern that the recent amendments to the Act removed the requirement for

a public body who becomes aware of a foreign demand for disclosure of personal information to immediately notify the Minister of Citizens' Services.

Others expressed support for the change to data residency provisions. The BC Tech Association stated that the new provisions improve a public body's access to modern tools and the efficiencies of government services. They added that moving data residency rules outside of legislation and into regulations will allow government to react swiftly to changes, improving business efficiency, predictability and privacy protections. The Council of Canadian Innovators stated that the move away from data residency is a step in the right direction because Canada has failed to build the data infrastructure necessary to make it efficient and economical to store data within its borders. They shared that the change will allow public bodies to contract a wider array of Canadian firms to deliver services while noting that the security of this information needs to be standardized.

The Personal Information Disclosure for Storage Outside of Canada Regulation (B.C. Reg. 294/2021) requires the head of a public body to make a privacy impact assessment for all programs, projects and systems in which sensitive personal information is disclosed outside of Canada. The Canadian Civil Liberties Association highlighted concerns about exceptions to this regulation and several presenters raised concerns about the regulation's impact on smaller public bodies. The BC Freedom of Information and Privacy Association noted that it will be difficult for smaller public bodies to adhere to the regulation, making such public bodies easier targets for malicious actors. They added that any regulation needs to be scalable from a provincial level to the smallest public body. The Canadian Civil Liberties Association emphasized that privacy impact assessments help manage risk and added that many small public bodies do not have the resources necessary to carry out complicated risk and privacy impact assessments, which require an assessment of a wide range of factors, including if a reasonable domestic alternative exists. They noted that risks are inherently subjective, and there needs to be a way to standardize these assessments and recommended that resources be made available to smaller public bodies to assist in these assessments. They further suggested that the Act outline minimum security requirements. The BC Teachers' Federation added that schools are increasingly reliant on digital technologies, but many districts do not have the budget for privacy training or proper privacy impact assessments. As

a possible solution, they suggested that such assessments be shared between school districts. The BC Teachers' Federation further noted that public bodies should try to assess if there is a reasonable domestic alternative prior to exporting to other jurisdictions.

Global Data Alliance was of the view that the removal of the data residency provision will enhance the efficient and effective delivery of public services and enhance cyber-security for public bodies in British Columbia. They pointed to guidance issued by the Information and Privacy Commissioner on assessing risks associated with data transfers outside of Canada, which states that an organization must assess the legal framework of the jurisdiction where the information will be disclosed. They further noted, however, that British Columbia has no standards for conducting such an analysis. Absent such standards, they suggested that the Commissioner's guidance effectively creates a blanket prohibition on data transfers outside of Canada, which is more stringent than other leading jurisdictions and could be in tension with the international data transfer norms set out in some trade agreements. As such, Global Data Alliance suggested that an assessment of risk should include all considerations equally, rather than just the legal framework of another jurisdiction. The Council of Canadian Innovators added that the privacy standards of international data transfers are already outlined by the Organization for Economic Co-operation and Development and subsequently integrated into Canada's federal privacy framework.

Some organizations stated that where data is stored is not the most important consideration when determining its safety. Global Data Alliance noted that because data is broken apart and sent as data 'packets' when transmitted, these packets can be processed in a variety of jurisdictions, making it difficult to determine location. Similarly, the Council of Canadian Innovators shared that even if data is stored and accessed in Canada, the data may still flow through the United States and thus be subject to their laws. Global Data alliance advised the Special Committee that the removal of the data residency provision aligns BC with other jurisdictions and added that how data is protected is more salient to cybersecurity than where data is located.

Health Data

Disclosure of Health Information

The Canadian Medical Protective Association stated that as currently written, the Act does not expressly permit public body healthcare providers to use and disclose personal health information for the purpose of legal proceedings or risk management services. They noted that without such permissions, a physician subject to an investigation may not be able to disclose the medical records of a patient in response to the investigation, and information cannot be shared by healthcare providers seeking risk management advice. As such, the Association recommended that the Act be amended to allow disclosure of personal information for purposes related to a legal proceeding, and for obtaining risk management services. Several other individuals noted the sensitivity of medical information and the importance of protecting such records. One optician highlighted an ongoing issue with a College of Optometrists of BC bylaw which provides for a retiring optometrist to pass patient files onto a new optometrist without receiving the consent of patients.

The Trial Lawyers Association of BC and Matt Canzer Law both expressed concern that lawyers are routinely charged a fee by public bodies when requesting access to personal health information on behalf of their clients, which is often required to prove a claim to the satisfaction of the courts. This is even though subsection 75 (3) of the Act states that a public body cannot require an applicant to pay a fee for an applicant's own personal information. Both recommended that the issue be clarified.

Several individuals opposed the sharing of personal health information related to the COVID-19 pandemic, such as vaccination status. These individuals highlighted concerns about the collection of information, and the requirement to publicly display personal information to obtain routine services. Several other individuals expressed concern about the March 2022 order of the provincial health officer requiring professional health colleges to record the vaccination status of their registrants. These individuals suggested that personal privacy was violated by this order, and that the collection of such information without consent is not compliant with the Act.

Stand-alone Health Legislation

The Information and Privacy Commissioner explained that British Columbia is the only province in Canada without a stand-alone health information law. The Commissioner detailed 13 different pieces of legislation that individuals, healthcare professionals, and researchers must navigate. For example, most doctors' offices are private sector, and thus are subject to the *Personal Information Protection Act*. The Ministry of Health, all health authorities and most hospitals are public bodies and subject to the Act. This means that a patient may be subject to different privacy and information laws depending on where they are treated. The Commissioner stated he has continued to provide oversight over the use of personal health information under the various laws and works directly with stakeholders to clarify responsibilities under the web of legislation, but noted that a consolidated approach is needed. The Commissioner recommended the establishment of a stand-alone health information privacy law for British Columbia.

The Canadian Medical Protective Association also recommended the creation of health information privacy legislation and noted that the overlap of legislation is unnecessarily complex and can lead to confusion amongst healthcare professionals about which legislation applies in different circumstances. They added that the current patchwork of privacy legislation is out of step with most other Canadian provinces, that it lacks clarity and consistency, and that it is not tailored to the unique nature of personal health information. Valerie Lipton noted an incident where they requested the correction of their personal information held by a private medical practice, and that resolution of the issue involved navigating different pieces of legislation which caused several delays and resulted in an unsatisfactory conclusion.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER: WHAT THE SPECIAL COMMITTEE HEARD

The Information and Privacy Commissioner is responsible for monitoring how the Act is administered to ensure that its purposes are achieved. In this capacity, the Commissioner is responsible for investigating complaints about public bodies' handling of personal information, initiating investigations and audits of access and privacy issues, engaging with and educating the public about the Act, and reviewing decisions by public bodies to withhold information.

Oversight & Penalties

The Information and Privacy Commissioner noted that other jurisdictions around the world have been updating their legislation to ensure that regulators with similar roles to those of his office have meaningful and effective tools and enforcement powers. The Commissioner noted that the recent amendments to the Act provided for strengthened enforcement provisions such as larger fines for unauthorized access to information and evading access requests. However, he suggested that his office's oversight powers have remained largely unchanged despite the increasing complexity of the issues and noted that the Act could be further strengthened in this regard.

The Commissioner shared that he currently has the power to comment on the implications of proposed legislative schemes; however, there is no legal requirement for government to consult with the Commissioner on draft legislation prior to implementation. Other jurisdictions, such as the European Union and Newfoundland and Labrador, have legal requirements that their supervisory authority or Commissioner be consulted on draft legislation. He noted that currently there are policies and procedures in BC for ministries to provide draft legislation to the Commissioner to review for privacy or freedom of information implications; however, this process is not always effective. As such, he recommended that his office

be consulted on draft legislation that may have implications for access to information or protection of privacy.

The 2021 amendments to the Act also established a penalty for those who willfully conceal, destroy or alter a record to avoid complying with an access request. The Commissioner added that oversight responsibility should also empower his office to review matters or allegations of unauthorized destruction of records that occur outside of, or prior to, an access request. Similarly, the Canadian Centre for Policy Alternatives noted that this penalty does not extend to records that are not subject to an access request and suggested that the Act be strengthened by adding penalties for deliberately failing to create records or for interfering with records regardless of whether the records have been requested. Stanley Tromp indicated his support for the new penalty and noted that other jurisdictions have similar legislation. Tromp also provided several other suggestions to strengthen oversight and penalties, including adding penalties for a failure to document. Albert Mitchell suggested that stronger penalties for departments and individuals who evade the Act also be implemented. Democracy Watch recommended that the Commissioner be given explicit powers to require systemic change to improve compliance with the Act.

Powers of the Commissioner

The Law Society of British Columbia raised concerns with section 43 of the Act, which allows the Commissioner to authorize a public body to disregard a request in particular circumstances, including if the request is frivolous or vexatious, or would unreasonably interfere with the operations of the public body. In particular, they noted that the criteria to meet the threshold to disregard a request is not clear enough, and that applications to the Commissioner are onerous and impact the Law Society's operations and the

ability to meet its obligations under the Act. As such, they recommended that section 43 be amended to provide clear and specific criteria that allow a public body to notify an individual that an access request is being held in abeyance without an application to the Commissioner. On the other hand, Keegan Clark suggested that section 43 provides too much power to the Commissioner and expressed opposition to the recent amendment that allows the Commissioner to authorize a public body to disregard a request for a record that has been disclosed to the applicant or that is accessible by the applicant from another source.

The Law Society of British Columbia also expressed concerns about the Commissioner's powers outlined in section 44 to require the production of documents, including documents that may be privileged. They noted that the Commissioner can compel the production of these documents to determine compliance with the Act, which they contend interferes with a lawyer's duty to their client. While section 44 includes a provision that the disclosure of a privileged document to the Commissioner does not affect privilege, they contend this does not go far enough given the importance of maintaining solicitor-client privilege, and suggested that the Act be amended to prevent the disclosure of all records subject to solicitor-client privilege and that a process be developed for exceptional circumstances that allows the courts to make a determination. In response to this submission, the Commissioner noted that the Supreme Court of Canada made it clear that a Legislature can legislate to enable an administrative tribunal like the Office of the Information and Privacy Commissioner to decide claims of privilege, and where absolutely necessary, to review the documents in which the alleged privilege applies.

The Commissioner is also empowered to educate and promote awareness of the Act. The BC Schizophrenia Society noted that individuals with schizophrenia can have severe symptoms which interfere with their ability to convey, share, and release information, but despite this, some clinicians refuse to provide families with access to the medical information of these individuals because they believe that such a disclosure would violate the Act. They noted that they have consulted with the Office of the Information and Privacy Commissioner and determined that this type of assistance is permitted under the Act and therefore recommend that the Commissioner work with relevant public bodies to improve education of the Act, specifically regarding its governance of health information,

and that the consultation services of the Office of the Information and Privacy Commissioner should be more widely known.

The Commissioner also noted two issues related to the sharing of information. First, the Act does not explicitly permit his office to share information with other regulators outside of a formal investigation. The Commissioner noted that by comparison, the *Personal Information Protection Act* authorizes "the exchange of information with any person who, under legislation of another province or of Canada, has powers and duties similar to those of the commissioner." He added that such a provision should be added to the *Freedom of Information and Protection of Privacy Act* to facilitate enforcement, collaboration and knowledge sharing between jurisdictions. Second, he noted that the ability to disclose information publicly is limited to situations where it is necessary to conduct an investigation, audit or inquiry, or to establish the grounds for findings or recommendations made in a report under the Act. He shared that there are critical occasions, such as protecting against a security vulnerability, where the public interest would be served by disclosing information outside of a formal order or report. He noted that the current restrictions are overly broad and can delay the disclosure of information in the public interest and recommended that the Act be amended to allow the Commissioner to disclose information obtained during the course of their duties when the disclosure is in the public interest.

As it relates to responsibilities of the Commissioner and the structure of the office, Yves Mayrand suggested that the Office of the Information and Privacy Commissioner should be split into separate offices, with one office responsible for privacy and the other for access to information. Similarly, Bob Mackin noted that the Commissioner is also the Registrar of Lobbyists and suggested that this should also be separate. Democracy Watch added that commissioners should be limited to one term of service.

Reviews

The Commissioner noted that subsection 56 (6) of the Act allows for an applicant to ask the Commissioner to review a decision of a public body, which must be completed within 90 days. He noted that in the last fiscal year, 59 percent of review files required more time. When the file cannot be reviewed in 90 days, the Commissioner must request an

extension from the applicant, and if an extension is denied, the Commissioner loses jurisdiction over the complaint. He noted that this is not an issue under the *Personal Information Protection Act* because subsection 50 (8) of the *Personal Information Protection Act* outlines that the review must be completed within 90 days unless the Commissioner specifies a later date and notifies the relevant parties. The Commissioner recommended that section 56 of the Act be amended to permit the Commissioner to extend the 90-day review period in a similar manner to that Act.

The British Columbia Lottery Corporation noted that maintaining confidentiality is a fundamental aspect of effective mediation, and the Act should be amended to explicitly require confidentiality during mediations. Stanley Tromp suggested that individuals should be given 60 days rather than 30 days to appeal to the Office of the Information and Privacy Commissioner following an unsatisfactory response from a public body.

Several individuals and organizations suggested increasing the resources allocated to the Office of the Information and Privacy Commissioner. The BC Freedom of Information and Privacy Association advised that the demands on the Office of the Information and Privacy Commissioner have increased in recent years, and as such it needs adequate funding to carry out its functions. The Canadian Centre for Policy Alternatives noted that the Office of the Information and Privacy Commissioner continues to find ways to optimize their office, but the caseload has grown beyond what the Office can manage with its existing resources. Journalist Bob Mackin expressed frustration with the timeline for freedom of information appeals, noting some may take years.

CONCLUSION AND RECOMMENDATIONS

The Special Committee was struck by the passion expressed by many individuals and organizations over the course of its work. From those who submit freedom of information requests, to privacy advocates, to public bodies that are subject to the Act, it was clear to Members that British Columbians care deeply about the Act and want to see it function as a modern and effective piece of legislation. The Special Committee agreed that access to information is a fundamental part of democratic governance, and that the public is entitled to adequate privacy protections.

The Special Committee carefully considered all the input it received and engaged in a robust debate as it determined which recommendations to put forward. Woven through much of the Members' discussion was the unique context of this particular statutory review, during which government introduced significant amendments to the Act. Members expressed differing views on some of the amendments, and therefore the Special Committee did not make recommendations in those areas. However, the Special Committee recognized the need for a fulsome review of the impact of these changes, and recommends that the Legislative Assembly appoint a special committee within two years of substantive changes being made to the Act to conduct a targeted review of those changes, in addition to the regular requirement for a statutory review every six years.

The Special Committee recommends that the Legislative Assembly:

- 1. Appoint a special committee within two years of substantive changes being made to the Act to conduct a targeted review of those changes, in addition to the statutory review required under section 80.**
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The Special Committee discussed and agreed upon the importance of ensuring that the Act remains effective today and into the future. Members noted that some outstanding recommendations of the earlier Special Committees continue to have a strong rationale for being implemented, and as such require particular attention (see Appendix A). At the same time, they acknowledged that there have been significant changes since the previous Committee's examination. In particular, the pace of technological change, and government's evolving relationship with Indigenous peoples are key considerations for modern freedom of information and privacy legislation.

The Special Committee also repeatedly returned to the idea of education. Members expressed that British Columbians would benefit from increased awareness about their rights to access information as well as to privacy protection. In addition, Members noted the importance of ensuring that employees of public bodies understand their obligations under the Act. The Special Committee recognized that the Information and Privacy Commissioner's mandate includes educating and informing the public and agreed that efforts in this regard should extend beyond the Commissioner; as such, Members encourage government to consider ways to increase outreach and education efforts related to the Act.

Freedom of Information

The Special Committee observed the considerable level of frustration with the freedom of information system, which was expressed by both members of the public seeking to access government information, as well as public bodies tasked with responding to requests. Noting these frustrations, Members agreed that there is a need for a culture shift when it comes to how public bodies disclose records, moving away from a culture where information is released mostly by request and subject to extensive redactions, toward a culture of transparency where information is considered public by default and limited only by narrowly applied and necessary exceptions. The Special Committee agreed that a key outcome of a culture of transparency is the increased proactive disclosure of the majority of public information. While the Special Committee expressed hope that a culture change and increased proactive disclosure would alleviate many of the present concerns with the freedom of information system, Members also discussed several ways to improve system effectiveness and noted that Indigenous peoples have a unique connection with the freedom of information provisions of the Act, which should be better reflected given their evolving relationship with the government and the necessity of advancing reconciliation.

Culture of Transparency

Members noted the Information and Privacy Commissioner's assertion that the foundation of a meaningful access to information system is ensuring that public bodies document and manage records of their decisions and actions, as well as some of the concerns raised about the adequacy of the current requirements in the *Information Management Act*. As such, the Special Committee was of the view that the Act be amended to require a duty to document, and noted that this remains an outstanding recommendation from the 2016 Special Committee. Members stressed that such a requirement would need to be consistently implemented across public bodies, and expressed some concern that the use of different devices, such as private email accounts or personal cell phones, makes it more difficult to create and locate records. In this regard, they acknowledged that a duty to document should be aimed at preserving government information regardless of the device on which it is stored.

The Special Committee recommends to the Legislative Assembly that the provincial government:

- 2. Add a duty to document to the Act to ensure all public bodies create and manage detailed records of decisions and actions.**

The Special Committee recognized there are opportunities to extend freedom of information provisions to additional bodies. They agreed with the Information and Privacy Commissioner and others that the administrative functions of the Legislative Assembly should be subject to the Act. The Special Committee noted that this should be done in a way that ensures records subject to parliamentary privilege, including those related to the work of Members and their constituency offices, remain exempt. The Special Committee also suggested that the Legislative Assembly Management Committee be engaged to advise on issues of implementation, including how to handle records from the Office of the Speaker. In addition to the Legislative Assembly, Members noted concerns that some other organizations remain exempt from the Act because they are not considered public bodies, even though they are publicly funded or perform public functions. Members reviewed the recent amendment that allows the Minister responsible for the Act to designate additional public bodies; however, the nature of this authority is discretionary. They noted that the 2016 Special Committee put forward a broader range of entities that would automatically be subject to the Act, and agreed that this would be preferable. Members also discussed that one approach could be to include a more expansive definition of public bodies that would be subject to the Act, with a schedule listing a limited number of entities that would be exempt due to exceptional circumstances.

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- 3. Extend freedom of information provisions to the administrative functions of the Legislative Assembly and ensure records subject to parliamentary privilege, including those related to the work of Members and their constituency offices, remain exempt.**

- 4. Amend the definition of “public body” to ensure that any board, committee, commissioner, panel, agency or corporation created or owned by a public body is subject to the Act, regardless of whether it is listed in Schedule 2.**

The Special Committee expressed that the current exceptions to disclosing information should be applied as narrowly as possible, in line with its desire to see public bodies move toward a culture where information is considered public by default. Members acknowledged that the confidentiality of Cabinet deliberations is an important part of BC’s system of governance that allows for open and frank discussions amongst ministers; they also identified opportunities for increased transparency given the importance of Cabinet decisions. In particular, Members were of the view that exceptions to disclosure under section 12 of the Act be limited to records that clearly reveal the substance of Cabinet’s deliberations, while additional supporting records such as background information be released. The Special Committee also noted that legal precedent has expanded the use of exceptions for policy advice and recommendations under section 13 of the Act, to include factual material and analysis, and agreed that the Act be amended to clarify the more limited intent of exceptions under that section. With regard to the exception for legal advice under section 14 of the Act, the Special Committee agreed that this be limited to records where legal advice was provided to a public body in confidence, rather than to all records where a lawyer was involved. The Special Committee also noted the concern that legal precedent has expanded the application of section 14 of the Act to include records subject to settlement privilege, and recommends this be corrected so that the public can access the terms of settlement agreements entered into by public bodies.

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- 5. Amend section 12 of the Act to clarify that background materials must be released.**
 - 6. Amend subsection 13 (1) of the Act to clarify that the discretionary exception for “advice” or “recommendations” does not extend to facts upon which they are based; or for factual, investigative**

or background material; or for the assessment or analysis of such material; or for professional or technical opinions.

- 7. Amend the Act to clarify that there is no exception to disclosure for settlement privilege.**
- 8. Amend section 14 of the Act to clarify that the exception applies only to legal advice provided in confidence and not any time a lawyer is involved in providing policy or program advice.**

The Special Committee also discussed practices that could strengthen the transparency and accountability of the Act itself. Members noted that section 80 of the Act allows the Special Committee reviewing the Act to include recommendations on the Act or any other Act. While the Special Committee did not have sufficient time to undertake a review of the more than 40 statutes that have provisions that prevail over the Act, it suggested that the next Special Committee should engage in this as part of its review and make recommendations about whether these provisions should be amended or repealed. The Special Committee also observed that in recent years, the annual report on the administration of the Act required by section 68 has been laid before the Legislative Assembly irregularly, and recommend that it be presented before June 30 each year.

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- 9. Amend the Act to require that the annual report on its administration be tabled before the Legislative Assembly before June 30th of each year.**
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Proactive Disclosure

The Special Committee agreed that increased proactive disclosure of information should be a key priority of government that can be acted on immediately. In addition to increasing transparency, Members were of the view that the proactive release of more records would alleviate many of the frustrations they heard about the current freedom of information system. In particular, they suggested this practice would reduce the volume of requests so that public bodies could focus resources on providing improved services for a smaller number of applications.

Members expressed that the ultimate aim be the proactive release of all records limited only by narrowly applied and necessary exceptions, and noted that this was also a key recommendation of the 2016 Special Committee. While Members acknowledged that the scale of this undertaking is such that it would take some time to reach full implementation, they agreed that public bodies should begin immediately implementing the necessary tools and policies to reach this goal. A key consideration should also be that information is released in a way that is accessible and easy to find.

In the interim, the Special Committee recommends that public bodies proactively release more categories of records. Members noted that public bodies must already establish categories of records to be made available to the public without request; however, they expressed that the implementation of publication schemes would provide guidance to ensure that more records are consistently disclosed across public bodies. As a start, Members agreed that publication schemes could include the types of factual and background information listed in subsection 13 (2) of the Act, which must already be disclosed in response to a request. Members also suggested that publication schemes should include the most commonly requested records, and noted that the Information and Privacy Commissioner could help with identifying these.

The Special Committee also discussed whether certain records prepared for Cabinet could be proactively released. While Members acknowledged it would be difficult to develop clear guidelines for the proactive disclosure of Cabinet records, given the importance of these records, they agreed that government should work toward establishing a publication scheme for proactively disclosing such records.

10. Ensure that information held by public bodies is considered public by default and proactively released without undue delay, limited only by the exceptions outlined in the Act.

- a. **Immediately require public bodies in collaboration with the Information and Privacy Commissioner to evaluate categories of records that are regularly requested and released and to make such records available through proactive disclosure.**
- b. **Amend the Act to require that all information not subject to an exception under Part 2 be proactively released in a timely manner and easily accessible.**

Finally, the Special Committee noted concerns about the lack of consistency with which information is released related to procurement of construction services for public projects, as raised by the BC Construction Association and Thomas Martin. Members agreed that transparent procurement processes are an important way to ensure fairness and build trust amongst bidders. They suggested that these aims go beyond procurement of constructions services, and apply to all public procurement processes. Members therefore recommend that records related to all public procurement processes be proactively disclosed, including preliminary analyses, business case documents, successful and unsuccessful bids, and evaluations of bids and contracts. They further noted that certain records should be disclosed even when a procurement process is cancelled.

11. Require records related to public procurement processes to be proactively released, including when a process is cancelled.

System Effectiveness

Members discussed that advances in technology provide opportunities for long-term modernization of the freedom of information system, and should be prioritized by government. At the same time, there was a recognition that technological tools bring new risks that will need to be carefully considered, and that smaller public bodies may not have the necessary resources to invest in the same tools as bigger public bodies such as the provincial government. Members also observed that different procedures and tools are currently used by different government ministries, and suggested that standardization could help to improve efficiency and allow for the increased use of technological solutions. One example noted was that technological tools could help with quicker document recovery, which may lead to lower processing fees charged to applicants.

On the subject of resources, Members expressed concern that the need for additional funding to handle freedom of information requests will continue to grow, and were of the view that a more sustainable approach would be to invest additional funding into improving system efficiencies and implementing new technological tools. Given the breadth of public bodies that are subject to the Act, Members discussed opportunities to create a general fund that smaller public bodies could draw from to invest in the modernization of their own processes.

12. Allocate resources to modernize the freedom of information system with a focus on timeliness, including through leveraging technological solutions, automation, and standardization.

Members also recognized that significant resources are required to respond to certain requests for information, particularly when they are very broad. The Special Committee was concerned that such requests impede access to information for other users; however, Members also acknowledged that making broad requests is sometimes the only way to discover important information. While Members recommend that the Act be amended to require applicants to provide more details about their desired records, they also suggest that increased proactive disclosure of records as well as looking at system improvements and better assisting applicants would be the preferred approach.

13. Amend section 5 of the Act to include additional requirements for identifying specific records, to provide applicants with more information about how to make a request from a public body that is not too broad.

The Special Committee noted the high amount of input it received that expressed opposition to the application fee introduced through the recent amendments to the Act. Members examined the issue from a number of perspectives and considered the recommendations they received for removing, changing and further analyzing policies and provisions around the fees. Fees were acknowledged to be one way to address concerns about very broad requests and to improve the effectiveness of the system for all users; however, Members also expressed concerns that the application fee might limit the ability for certain individuals and organizations to make requests. The Special Committee was unable to reach consensus on a recommendation related to the application fee.

Members also noted the frustration they heard about some public bodies returning no records unless the request indicates precisely the record that they hold. They suggested that this could be one factor contributing to applicants submitting broad requests for information, and that public bodies could do a better job of responding to the general idea of a request. The Special Committee was also of the view that public bodies could more regularly provide assistance to applicants in finding their desired information, as is required under section 6 of the Act; however, applicants should retain discretion over how they frame their request. The Special Committee also took note of the unique concerns expressed by student journalists through the Student Press Freedom Act Campaign, and agreed that younger generations be encouraged to learn about and use the freedom of information system.

14. Strengthen the duty to assist in section 6 of the Act, including ensuring public bodies are aware of the duty to assist applicants and requiring public bodies to provide timely, accurate and fulsome assistance to applicants.

Members agreed that it is important to ensure public bodies provide their staff with adequate training on their obligations

when it comes to handling freedom of information requests, including the requirement to assist applicants, and that this should be treated as an important responsibility. At the same time, the Special Committee acknowledged that employees often respond to freedom of information requests in addition to their main responsibilities, and that many do the best they can in the present system. In addition to staff training, Members discussed ways to improve public awareness about the freedom of information system. They agreed that there should be more education about how to make a freedom of information request and noted that such education should also include the public's rights.

The Special Committee also discussed several ways that public bodies could better meet the expectations of the public. Members agreed that timely access to information is important, and supported the idea of shortening the time limit for responding to requests from 30 business days to 30 calendar days to align with other jurisdictions. Members noted that this remains an outstanding recommendation of the 2016 Special Committee. They expressed concern about the feasibility of shorter timelines given that public bodies are challenged to meet the existing time limit and acknowledged that setting an ambitious expectation for timely responses is important and should be achievable as system improvements and increased proactive disclosure are introduced. To increase the accountability of public bodies in meeting timelines, the Special Committee supports the recommendation put forward by the 2016 Special Committee and others that all fees be waived for applicants when a public body fails to meet the statutory timeline, and also recommends that public bodies be required to publicly report on timeliness.

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- 15. Reduce the timeline in which a public body must respond to an access request or extend the time for responding to a request from 30 business days to 30 calendar days.**
 - 16. Amend the Act to provide an automatic waiver of application fees and processing fees for applicants when a public body has failed to meet the statutory timeline for freedom of information requests.**

- 17. Require public bodies to provide data on timeliness of responding to requests for information, and regularly make this data available to the public.**

In addition to timeliness, the Special Committee was concerned by accounts of high processing fees, and in particular instances when a public body returns to an applicant with a higher estimate than originally provided. In this regard, Members were of the view that public bodies not be allowed to exceed a written estimate after it has been provided. Finally, Members noted that sometimes requests for information are made for whistleblowing purposes and as such, protecting the identity of the applicant is critical. Members further noted that the 2016 Special Committee recommended that the Act be amended to establish that an applicant who makes an access request has a right to anonymity, and agreed to support this recommendation.

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- 18. Amend the Act to clarify that the final amount charged to fulfill a request cannot exceed the initial written estimate provided to the requestor by the public body.**
 - 19. Amend the Act to establish that an applicant who makes a formal access request has the right to anonymity.**
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Indigenous Peoples

Members discussed the importance of Indigenous groups reliably being able to access their own peoples' information that is held by the provincial government, including records on residential schools, as well as information required to substantiate their claims against the Crown. In this regard, they considered whether there are ways to make records required for validating claims a mandatory ground for disclosure. The Special Committee also contemplated whether Indigenous governing bodies should be considered public bodies under the Act, to promote transparency and accountability. Members believed that this is an idea that warrants further consideration by the provincial government, in collaboration with Indigenous peoples, given the evolving relationship between governments.

The Special Committee took note of the recent amendments aimed at supporting reconciliation, including measures to protect Indigenous cultural information and to update outdated language. Members also observed that there are no action items related to the Act in the recently released *Declaration on the Rights of Indigenous Peoples Act* Action Plan. They agreed that while the recent amendments included important changes, a comprehensive review of the Act is necessary given the significant changes to the provincial government's relationship with Indigenous peoples and reconciliation efforts since the Act was introduced, and even since previous statutory reviews. Such a review could examine what information sharing with Indigenous peoples looks like moving forward, including consideration of whether Indigenous governing bodies should be subject to the Act.

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- 20. Conduct a comprehensive review of the Act to address the evolving relationship with Indigenous governing bodies as it pertains to the *Declaration on the Rights of Indigenous Peoples Act*.**
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Privacy

The Special Committee observed that the rapid development and implementation of new technologies brings new privacy impacts that must be addressed by public bodies. As such, the Special Committee noted that several of the issues raised during its consultation require a much deeper analysis than was possible in its examination, and recommends a robust and fulsome examination of the various issues presented to the Special Committee with a view of developing clear regulations.

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- 21. Examine the socioeconomic and privacy issues associated with de-identification, automated decision-making, biometrics, the right to be forgotten, data-linking, and data destruction with a view of developing clear regulations.**
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New Technologies

In their discussion on the use of learning tools in an education setting, Members agreed that the switch to online learning was a necessary innovation for the continuity of education during the COVID-19 pandemic. At the same time, they acknowledged concerns regarding the level of surveillance and data collection that children are subject to in this environment. Members expressed that schools provide an environment for children and youth to grow by learning and exploring new ideas and philosophies, and expressed reservations about how new technologies record and store these activities. The Special Committee noted that regulation in this area is complicated due to the fact that private third-party service providers that supply these tools are subject to different privacy legislation than the school boards that use their services. Members also acknowledged what they heard about the number of teachers who felt they lacked adequate privacy training or knowledge of the Act, and agreed that it is essential that teachers be provided with the support and training they need to understand their obligations and how those obligations interact with new technologies.

Regarding data-linking programs, Members noted that these tools have a clear benefit to British Columbians and can improve service delivery and also recognized that the power of data-linking necessitates strong oversight. The Special Committee was pleased to see that the definition of data-linking was improved in the recent amendments to the Act; however, Members were concerned about the removal of the requirement for the Commissioner to review a privacy impact assessment prior to the implementation of any new data-linking initiative. As such, they recommend that government consult with the Information and Privacy Commissioner to develop regulations related to data-linking that address transparency, privacy protections and oversight.

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- 22. Draft and consult with the OIPC on regulations that address transparency, privacy protections and oversight for data-linking.**
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The Special Committee acknowledged that automated decision-making is currently being adopted by public bodies to improve services, and that the decisions made by these tools can have significant impacts on many aspects of an individual's life. Members noted that these impacts can be concerning when people do not understand how information

about them is being used and how the decisions are being made by these systems. As such, Members agreed that the Act needs to be amended to ensure adequate oversight for automated decision-making, including defining what it is, ensuring there is transparency about how decisions are being made and the opportunity to object to its use.

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- 23. Amend the Act to define “automated decision-making.”**
 - 24. Amend the Act to give individuals the right to be notified that automated decision-making will be used to make a decision about them, and, on request, receive a meaningful, plain language explanation of the reasons and criteria used. Individuals should also be given the right to submit an objection to the use of automated processing to an individual with the authority to review and change the decision.**
 - 25. Require public bodies to create a record of how a decision is made that impacts an individual using automated decision-making in a format that is traceable. Where trade secrets or security classification prevent an explanation from being provided, the following should at least be provided:**
 - a. the type of personal information collected or used;**
 - b. why the information is relevant; and**
 - c. its likely impact on the individual.**
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Privacy Management

The Special Committee recognized that the collection of sensitive personal information for the purposes of providing services is an important responsibility and agreed that it is essential that such collection is limited to only what is required, and that the individual is informed about such collection and understands why it is necessary. Members acknowledged that the yet to be implemented requirement for public bodies to develop a privacy management program,

which involves publicly available privacy policies, may help in this regard.

Members also discussed concerns raised that the Act does not currently outline any requirements for public bodies to correct personal information if an individual requests that information be updated. They recognized this could create a serious issue for an individual given that the records that public bodies hold stay with an individual for their entire life, and can be used to make important decisions about eligibility for programs or service delivery. As an example, Members noted the difficulty an individual may have in correcting the misspelling of a non-anglicized name on an identification document. As such, Members recommend that public bodies be required to correct personal information if they are satisfied on reasonable grounds that the request should be implemented, and noted this remains an outstanding recommendation of the 2016 Special Committee.

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- 26. Add to section 29 of the Act a requirement that public bodies correct personal information when an individual requests that their personal information be corrected, if the public body is satisfied on reasonable grounds that the request made should be implemented.**
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When discussing the possibility of recommending data retention limits for public bodies, Members recognized that different circumstances and types of records may warrant different retention schedules. For example, retaining some types of data indefinitely may be helpful for historical purposes. It was also raised that information holdings related to the residential school system have been important to seeking justice for victims. At the same time, Members expressed reservations about indefinite retention periods for certain types of personal information, such as behavioural records collected in an education setting which may be necessary for a period of time but likely not indefinitely. As such, Members concluded that this is a nuanced issue, and it is important that public bodies, including the Ministry of Education, carefully examine their data retention policies.

Members recognized that de-identification of data is a powerful tool for improving security measures for data and can assist in opening new avenues of research with sensitive information or data subjects. They also noted that even with

a strong algorithm, de-identified information can be at risk of re-identification. As such, the Special Committee agreed that de-identification of data is not enough to guarantee security, and that such information will still require effective safeguards and oversight; however, further study on the impact of this matter is still needed.

Finally, Members acknowledged that they received substantial input related to the recent amendments to the data residency provisions, which allow public bodies to now store data outside of Canada. Members agreed that data is one of the most valuable commodities and it is important to have a strong regulatory framework in place to protect information, and acknowledged that data held in other jurisdictions is not subject to British Columbia's laws. They also noted that the present reality of data use and storage means that data security is complex and requires an assessment of multiple risks. During its discussion, the Special Committee also noted that British Columbia needs to remain globally competitive in a rapidly changing digital environment and be able to leverage the best technologies, and considered the feasibility of developing British Columbia's domestic server capacity against relying on established global leaders for British Columbia's data server needs.

Health Information

Members noted that health information privacy is subject to an unnecessary complexity of multiple pieces of legislation. The Special Committee recommends a stand-alone health information privacy law, and noted that this is an outstanding recommendation of the 2016 Special Committee. Members also expressed concern about issues raised by members of the legal community, noting that representatives are being charged processing fees for accessing the personal information of their clients. Members noted that the Act outlines that individuals should not be charged fees for access to their own personal information, and recommend that it be clarified that this extends to when a representative is requesting personal information on behalf of an individual.

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- 27. Enact new comprehensive health information privacy legislation.**
 - 28. Amend subsection 75 (3) of the Act to make it clear that applications by an individual or a party requesting records on their behalf are exempt from fees and, in the interim, issue an**

interpretation bulletin that clarifies that legal representatives are able to collect personal information on behalf of their clients, as is the intent of the Act.

Legislative Coordination

Members noted that in addition to the *Freedom of Information and Protection of Privacy Act*, privacy in British Columbia is also regulated by the *Personal Information Protection Act*, which governs the private sector. Though there is an important distinction between the public and private sector, several of the issues observed by the Special Committee during this consultation—in particular those related to new technologies—exist in both pieces of legislation. While acknowledging that both pieces of legislation require a special committee to conduct a review at least once every six years, historically such reviews have taken place separately. The Special Committee is of the view that British Columbians would be better served by one special committee examining both Acts at the same time, as such a process would ensure a more fulsome consideration of the interrelated privacy issues that exist in both the public and private realms.

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- 29. Amend both the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* to enable concurrent reviews of both Acts by one special committee to enable consistency and alignment across issues that are relevant to both Acts.**
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Office of the Information and Privacy Commissioner

The Special Committee agreed that the Information and Privacy Commissioner plays an important role in providing oversight and accountability for the requirements of the Act, as well as advocating for the access and privacy rights of British Columbians. As such, Members recommend that the Commissioner be consulted when provisions that override the Act are being contemplated in other legislation, and when draft legislation could have implications for access to information or protection of privacy.

30. Amend the Act to require the Information and Privacy Commissioner to be consulted when provisions that override the Act are being added to other legislation, and when draft legislation could have implications for access to information or protection of privacy.

The Special Committee recognized that several individuals and organizations expressed concerns related to resourcing for the Office of the Information and Privacy Commissioner, and in particular delays in resolving issues. Members noted that a parliamentary committee, the Select Standing Committee on Finance and Government Services, considers and makes recommendations on the annual budgets of all statutory officers, including the Commissioner. As part of this process, statutory officers also have the opportunity to make in-year supplementary funding requests.

While discussing the powers of the Commissioner, the Special Committee acknowledged that many privacy issues are interjurisdictional, and as such the Commissioner would benefit from the ability to share information with their regulatory counterparts across Canada. Members noted that such a provision is in the *Personal Information Protection Act*, and recommend that similar powers exist in the *Freedom of Information and Protection of Privacy Act*. The Special Committee also agreed that when the Commissioner needed more flexibility to comment on access or privacy issues that are in the public interest, there must be a mechanism for the Commissioner to comment on issues in the public interest outside of the publication of a report. Additionally, the Special Committee agreed that in instances where the Information and Privacy Commissioner is delayed in completing a review, they must be able to extend the review period beyond 90-days without losing jurisdiction over the matter, as they can with the *Personal Information Protection Act*.

31. Amend the Act to allow the Commissioner to share information with regulatory counterparts in alignment with paragraph 36 (1) (k) of the *Personal Information Protection Act*.

32. Amend section 47 of the Act to allow the Commissioner to disclose information obtained in the course of their duties

when the disclosure is in the public interest.

33. Amend section 56 of the Act to permit the Commissioner to extend the 90-day review period in a manner that is consistent with subsection 50 (8) of the *Personal Information Protection Act*.

The Special Committee noted that the Commissioner's oversight authorities do not extend to the unauthorized destruction of documents. Members acknowledged that the 2021 amendments make it an offence to destroy records subject to an access request. They agreed these protections could be further strengthened by granting the Commissioner the authority to review matters or allegations of unauthorized destruction, and noted that this is an outstanding recommendation of the 2016 Special Committee.

34. Amend section 42 of the Act to expand the Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records. The Commissioner should have jurisdiction over the unauthorized destruction of records as set out in:

- a. any enactment of British Columbia, or
 - b. set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of a local public body.
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APPENDIX A: LIST OF RECOMMENDATIONS

Special Committee

1. Appoint a special committee within two years of substantive changes being made to the Act to conduct a targeted review of those changes, in addition to the statutory review required under section 80.

Culture of Transparency

2. Add a duty to document to the Act to ensure all public bodies create and manage detailed records of decisions and actions. (Similar to 2016 Special Committee Recommendation)
3. Extend freedom of information provisions to the administrative functions of the Legislative Assembly and ensure records subject to parliamentary privilege, including those related to the work of Members and their constituency offices, remain exempt.
4. Amend the definition of “public body” to ensure that any board, committee, commissioner, panel, agency or corporation created or owned by a public body is subject to the Act, regardless of whether it is listed in Schedule 2. (Similar to 2010 and 2016 Special Committee Recommendations)
5. Amend section 12 of the Act to clarify that background materials must be released.
6. Amend subsection 13 (1) of the Act to clarify that the discretionary exception for “advice” or “recommendations” does not extend to facts upon which they are based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions. (Similar to 2004 and 2016 Special Committee Recommendations)

7. Amend the Act to clarify that there is no exception to disclosure for settlement privilege.
8. Amend section 14 of the Act to clarify that the exception applies only to legal advice provided in confidence and not any time a lawyer is involved in providing policy or program advice.
9. Amend the Act to require that the annual report on its administration be tabled before the Legislative Assembly before June 30th of each year.
10. Ensure that information held by public bodies is considered public by default and proactively released without undue delay, limited only by the exceptions outlined in the Act.
 - a. Immediately require public bodies in collaboration with the Information and Privacy Commissioner to evaluate categories of records that are regularly requested and released and to make such records available through proactive disclosure.
 - b. Amend the Act to require that all information not subject to an exception under Division 2 be proactively released in a timely manner and easily accessible.(Similar to 2004, 2010 and 2016 Special Committee Recommendations)
11. Require records related to public procurement processes to be proactively released, including when a process is cancelled.

System Effectiveness

12. Allocate resources to modernize the freedom of information system with a focus on timeliness, including through leveraging technological solutions, automation, and standardization.
13. Amend section 5 of the Act to include additional requirements for identifying specific records, to provide applicants with more information about how to make a request from a public body that is not too broad.
14. Strengthen the duty to assist in section 6 of the Act, including ensuring public bodies are aware of the duty to assist applicants and requiring public bodies to provide timely, accurate and fulsome assistance to applicants.
15. Reduce the timeline in which a public body must respond to an access request or extend the time for responding to a request from 30 business days to 30 calendar days. (Similar to 2016 Special Committee Recommendation)
16. Amend the Act to provide an automatic waiver of application fees and processing fees for applicants when a public body has failed to meet the statutory timeline for freedom of information requests. (Similar to 2016 Special Committee Recommendation)
17. Require public bodies to provide data on timeliness of responding to requests for information, and regularly make this data available to the public
18. Amend the Act to clarify that the final amount charged to fulfill a request cannot exceed the initial written estimate provided to the requestor by the public body.
19. Amend the Act to establish that an applicant who makes a formal access request has the right to anonymity. (Similar to 2004, 2010 and 2016 Special Committee Recommendations)

Indigenous Peoples

20. Conduct a comprehensive review of the Act to address the evolving relationship with Indigenous governing bodies as it pertains to the *Declaration on the Rights of Indigenous Peoples Act*.

Privacy

21. Examine the socioeconomic and privacy issues associated with de-identification, automated decision-making, biometrics, the right to be forgotten, data-linking, and data destruction with a view of developing clear regulations.

New Technologies

22. Draft and consult with the OIPC on regulations that address transparency, privacy protections and oversight for data-linking. (Similar to 2016 Special Committee Recommendation)
23. Amend the Act to define “automated decision-making.”
24. Amend the Act to give individuals the right to be notified that automated decision-making will be used to make a decision about them, and, on request, receive a meaningful, plain language explanation of the reasons and criteria used. Individuals should also be given the right to submit an objection to the use of automated processing to an individual with the authority to review and change the decision.
25. Require public bodies to create a record of how a decision is made that impacts an individual using automated decision-making in a format that is traceable. Where trade secrets or security classification prevent an explanation from being provided, the following should at least be provided:
 - a. the type of personal information collected or used;
 - b. why the information is relevant; and
 - c. its likely impact on the individual.

Privacy Management

26. Add to section 29 of the Act a requirement that public bodies correct personal information when an individual requests that their personal information be corrected, if the public body is satisfied on reasonable grounds that the request made should be implemented. (Similar to 2016 Special Committee Recommendation)

Health Information

27. Enact new comprehensive health information privacy legislation. (Similar to 2016 Special Committee Recommendation)
28. Amend subsection 75 (3) of the Act to make it clear that applications by an individual or a party requesting records on their behalf are exempt from fees and, in the interim, issue an interpretation bulletin that clarifies that legal representatives are able to collect personal information on behalf of their clients, as is the intent of the Act.

Legislative Coordination

29. Amend both the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* to enable concurrent reviews of both Acts by one special committee to enable consistency and alignment across issues that are relevant to both Acts.

Office of the Information and Privacy Commissioner

30. Amend the Act to require the Information and Privacy Commissioner to be consulted when provisions that override the Act are being added to other legislation, and when draft legislation could have implications for access to information or protection of privacy.
31. Amend the Act to allow the Commissioner to share information with regulatory counterparts in alignment with paragraph 36 (1) (k) of the *Personal Information Protection Act*.
32. Amend section 47 of the Act to allow the Commissioner to disclose information obtained in the course of their duties when the disclosure is in the public interest.
33. Amend section 56 of the Act to permit the Commissioner to extend the 90-day review period in a manner that is consistent with subsection 50 (8) of the *Personal Information Protection Act*. (Similar to 2010 Special Committee Recommendation)

34. Amend section 42 of the Act to expand the Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records. The Commissioner should have jurisdiction over the unauthorized destruction of records as set out in:
 - a. any enactment of British Columbia, or
 - b. set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of a local public body.

(Similar to 2016 Special Committee Recommendation)

APPENDIX B: PARTICIPANTS

The following is a list of individuals and organizations who participated in the Special Committee's consultation.

| | | | |
|---|--|--|---|
| Marie Arcand | Canadian Association of Journalists | Ian Glass, Global Data Alliance | Annie Philip |
| Tyler Anderlini | Canadian Centre for Policy Alternatives, BC Office | Vincent Gogolek | Greg Phillips |
| Carole Anderson | Canadian Civil Liberties Association | Sylvia Herchen | Deborah Pokorny |
| Julia Baker | Centre for Law and Democracy | Daniel Horton | Mariane Reimer |
| Jill Bargen | Michael Chapman | Penelope Houston | Keith Reynolds |
| BC and Yukon Community Newsmedia Association | Monte Chartrand | York Hsiang | Michelle Rouillard |
| BC Association of Police Boards | Keegan Clark | Joe Hugh | Wanda Rowat |
| BC Construction Association | Council of Canadian Innovators | Krista Hunt | Devo Ryans clan |
| BC Ferry & Marine Workers' Union | Emma DalSnato | Independent Contractors and Businesses Association | Linnaea Sandberg |
| BC Freedom of Information and Privacy Association | Sara Darwin | i-SIGMA | Kaitlyn Schievink |
| BC Schizophrenia Society | Democracy Watch | Michael James | Theresa Schmidt |
| BC Specific Claims Working Group | Katharina Dittus | Maureen Juffs | Ryan Soprovich |
| BC Teachers Federation | Jordan Donovan | Valerie Lipton | Student Press Freedom Act Campaign |
| BC Tech Association | Betty Dressler | Wayne Llewellyn | The Canadian Medical Protective Association |
| Cameron Bell | Nicole Duncan | Erin Machuk | The Law Society of British Columbia |
| Jarrett Bennett | John Ehrlich | Thomas Martin | Bianca Thoma |
| Lorene Benoit | Francesca Fabbri | Matt Canzer Law | Erik Treijs |
| Corbie Black | Susan Ferron | Yves Mayrand | Stanley Tromp |
| Ryan Bougie | Kara Fleming | Allison McLean | Ubysey Publications Society |
| Lynne Bourbonnais | Fraser Valley Current/Overstory Media Group | Cynthia Mistal | Union of British Columbia Indian Chiefs |
| British Columbia Lottery Corporation | Eric Ginter | Albert Mitchell | Wilderness Committee |
| Geraldine Brooks | Christopher Glascock | Ina Mitchell | Gail Wolff |
| | | Sarah Ondault | Susan Ylanen |
| | | John Perone | Jenny Zhou |
| | | Barry Peters | |
| | | Janelle Petrescue | |

