



INFORMATION & PRIVACY  
COMMISSIONER

British Columbia  
Canada

March 30, 2001

Honourable Joy MacPhail  
Deputy Premier and Minister of Education  
Parliament Buildings  
Victoria, B.C. V8V 1X4

Dear Deputy Premier MacPhail:

**Bill 21 – Amendment to the *Freedom of Information and Protection of Privacy Act*  
("FOI Act") – OIPC File I2962**

I write regarding Bill 21, the Abortion Services Statutes Amendment Act, 2001 – tabled yesterday in the Legislature – as it relates to the FOI Act. I have several serious concerns about Bill 21.

***Bill 21 Fundamentally Changes the FOI Act***

My first concern is that the amendment fundamentally changes the nature of the FOI Act, by introducing a mandatory exception based solely on the subject-matter of a record. Such a subject-matter exception is a feature of outmoded, and rightly denigrated, access and privacy laws, not the cutting-edge statute that this government enacted in 1993.

At present, the mandatory exclusions currently in place in the FOI Act are based on general types of information that reflect protected public interests (such as Cabinet confidences) and private interests (such as third party business information and personal privacy). The current mandatory exceptions are based on specified harms and, in the limited case of Cabinet deliberations, on a long-standing and recognized privilege that has constitutional dimensions. Bill 21 will, for the first time, specify a subject that is essentially off-limits under the FOI Act.

***Bill 21 Is Not Necessary***

The FOI Act as it stands – notably through ss. 19 and 22 – has proved more than capable of protecting such information as would identify abortion service providers or patients or threaten their health or safety. Of the almost 450 orders made under the FOI Act, less than half a dozen have involved records relating to abortion services. In no case has information been ordered disclosed that would identify or otherwise jeopardize abortion service providers, patients or other persons who are in any way associated with abortion services. I should also note that I am not aware of any cases where information that should or must be withheld under the FOI Act has been disclosed inappropriately by a public body. The Bill 21 amendment is not necessary.

---

Mailing Address: PO Box 9038, Stn Prov Govt, Victoria BC V8W 9A4

Location: Fourth Floor, 1675 Douglas Street

Telephone: (250) 387-3629 Facsimile: (250) 387-1696

Toll Free enquiries through Enquiry BC at 1-800-663-7867 or 660-2421 (Vancouver)

website: <http://www.oipcbc.org>

### *Creeping Repeal of the FOI Act*

My next concern is that Bill 21 represents yet another example of the "creeping repeal" of the FOI Act. In the last five years, this government has enacted a number of separate access and privacy schemes that operate, in whole or in part, outside the FOI Act. In each instance, it is argued that special needs dictate special access and privacy provisions. In none of these cases has that assertion been justified.

The best-known examples of this are the *Child, Family and Community Services Act* and, more recently, the *Secure Care Act*. Both of these Acts have notwithstanding clauses that almost entirely exclude the FOI Act and set up their own access and privacy regimes. Both of these schemes are, in my view, neither necessary nor desirable. In fact, they significantly diminish the access and privacy rights otherwise available to British Columbians under the FOI Act. This Office has publicly criticized both Acts for this reason.

While the Bill 21 amendment does not exclude abortion services information from coverage by the FOI Act, it essentially has the same effect. With the exception of policies and global statistics, all information relating to that specific subject (the provision of abortion services) *must* not be disclosed. The only exception is that an individual may request information about abortion services that she has received. Many legitimate issues of the accountability of public bodies for their use of public funds cannot, therefore, be addressed through the right of access. Bill 21 simply excludes accountability by, for all intents and purposes, repealing the right of access in this area. It does this even though, as is noted above, there is no need for such a change.

### *Amendments Recommended by the Special Committee*

I am disappointed that the government chose to place this amendment to the FOI Act ahead of amendments recommended by the all-party Special Committee of the Legislature to review the FOI Act, which reported in July of 1999. Despite continued urging by me and by others – including in my annual report tabled yesterday in the House – those amendments have yet to be made. It is troubling that unanimous recommendations of a Special Committee of the Legislature have gathered dust in this way. While the FOI Act is, by common consensus across Canada, the country's leading access and privacy law, amendments recommended by the Special Committee will improve it and ensure better public service. For this reason, I once again encourage the government to delay no longer in implementing these important amendments.

### *Lack of Consultation With this Office*

In closing, I must express my concern at not having been consulted about the significant change to the FOI Act effected by Bill 21. Section 42(1)(f) of the FOI Act expressly provides that the commissioner may comment on the implications of proposed legislation for access and privacy. This Office has regularly been given the opportunity in the past to comment on draft legislation, including draft Bills. In this case, I was not asked to

comment on the Bill before it was tabled, even though it contains a significant amendment to the FOI Act. This is regrettable, to say the least.

I would be pleased to discuss this letter with you if you wish.

Yours sincerely,



David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

cc: Premier Ujjal Dosanjh

Gordon Campbell  
Leader of the Opposition

bcc: Geoff Plant, MLA

Stuart Culbertson – by fax  
Byron Barnard – by fax  
Chris Norman – by fax