

BILL 73 -- 2004
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY
AMENDMENT ACT, 2004

In Brief

On October 19, 2004, government passed **Bill 73** (received Royal Assent on October 21st) to amend the *Freedom of Information and Protection of Privacy Act* (FOIPP Act) in response to concerns raised about the USA Patriot Act and to ensure that the personal information of British Columbians continues to enjoy the highest protection of any personal information in Canada.

The purpose of the amendments is to restrict access to British Columbians' personal information by countries with inadequate privacy laws and to restrict the applicability of foreign laws containing extra-territorial demand provisions – such as the USA Patriot Act.

The amendments, which are the first of their kind in Canada, will support government's Alternative Service Delivery initiatives by ensuring strong protection for personal information that is handled by service providers and will position BC as a leader in this area

In summary, the amendments:

1. prevent personal information in the custody or control of a public body from being stored or accessed outside of Canada;
2. place restrictions on public bodies and service providers disclosing personal information outside of Canada (key changes include new restrictions on disclosing personal information for “consistent purposes” and disclosing personal information to public body employees – which includes contractors – for the performance of their duties. Disclosure of personal information for these purposes may now only occur within Canada);
3. extend the requirements and restrictions that apply to public bodies regarding the collection, use, storage, and disclosure of personal information to public body employees, public body service providers, and employees or associates of service providers;
4. add an obligation for public bodies, service providers and employees of both to report to government any foreign demand for disclosure of personal information that is not authorized by the FOIPP Act;
5. add whistle-blower protection for employees who report a foreign demand for disclosure of personal information; or who report, try to prevent, or refuse to do something they believe to be, a contravention of the Act; and,

6. add offence penalties for contravening the notice requirements, the whistle-blower provisions or the restrictions placed on storing, accessing or disclosing personal information outside of Canada.

The fines for committing an offence are up to \$500,000 for a corporation; up to \$25,000 for a partnership or an individual who is a service provider; and up to \$2,000 for an individual who is not a service provider (such as an employee).

Bill 73 also contains important transitional provisions for existing contracts and research agreements.

- Contracts and research arrangements entered into by the government or a ministry on or before October 12, 2004, are not subject to the new privacy protection provisions proposed by this Bill. The new privacy protection provisions will also not apply to a contract or research agreement that the government or a ministry became legally obligated to enter into on or before October 12, 2004, as a result of a completed binding competitive process.
- With respect to other public bodies (such as crown corporations, municipalities, and hospitals), the new privacy protection provisions will not apply to contracts and research agreements they enter into, or become obliged to enter into, before October 21, 2004 (the date this Bill received Royal Assent).
- The transitional provisions apply only until the end of the current term of the contract and only where a public body cannot reasonably bring their pre-existing contracts and agreements into compliance with the new provisions.
- The transitional provisions recognize that contracts and agreements already exist that cannot reasonably meet the new privacy protection provisions proposed by this bill. Wherever possible, a public body must make all reasonable efforts to bring the contract or arrangement into compliance but until that is possible, the new provisions will not take effect.
- It is also important to note that the transitional provisions do not apply to the new whistle-blower protections. Whistle-blower protection will take effect for all employees and service provider employees upon Royal Assent (October 21, 2004).