

**AMENDMENTS TO THE *FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT* (resulting from the
*Freedom of Information and Protection of Privacy
Amendment Act, 2002 (Bill 7)*)**

SUMMARIES/IMPLICATIONS

Introduction:

Amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPP Act) were passed on April 11, 2002. The *Freedom of Information and Protection of Privacy Amendment Act* (Bill 7) made 19 amendments to the FOIPP Act. These amendments responded to the recommendations of the Special Committee of the Legislature (Legislative Committee) that reviewed the FOIPP Act from October 1997 to July 1999. The amendments also provided improvements to the FOIPP Act, addressing in particular important cost and compliance issues. The amendments also offered relief to the Office of the Information and Privacy Commissioner in meeting that office's statutory responsibilities in the face of resource constraints.

On June 25, 2001, the Premier instructed the Minister of Management Services to conduct a review of the FOIPP Act "to increase openness in government and reduce compliance costs." This review is ongoing and will result in further improvements and possible proposals for amendment for upcoming sessions.

The following information is intended to provide a reference source that summarizes and explains the amendments. The policies related to these amendments will be incorporate into the Freedom of Information and Protection of Privacy Act Policy and Procedures Manual:
http://www.mser.gov.bc.ca/FOI_POP/manual/toc.htm.

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Bill 7 – Amendments

Amendment #1 (to Section 5(1) of the FOIPP Act)

Subsection 5(1) is repealed and the following substituted:

5 (1) To obtain access to a record, the applicant must make a written request that

(a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought,

(b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and

(c) is submitted to the public body that the applicant believes has custody or control of the record.

(2) The applicant may ask for a copy of the record or ask to examine the record.

Summary of Amendment:

Section 5(1)(a) places a requirement on an applicant to provide sufficient information to allow an “experienced employee to locate the requested records”.

Section 5(1)(b) requires an applicant making a request on behalf of another party, in accordance with regulation 3, to provide documentation to show that they are authorized to make such a request.

Section 5(1)(c) is unchanged.

Explanation:

Section 5(1)(a) is intended for situations where the public body is unable to understand the nature of the records that are being requested. For example, a request for "all records related to the financial takeover of the province" is a request where it is not immediately evident what records the requester is

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seeking. Section 5(1)(a) could be used in this circumstance to allow the public body the opportunity to clarify the request prior to opening it. **The public body is not required to open a request until it is able to understand what records are being sought or it has the required proof of authority.**

It is important to note, however, that section 5(1)(a) is not intended for requests that are very broad but written in language that allows the ministry to identify what records the applicant is seeking. The FOIPP Act contains other options for addressing the issues arising from broad, large-scale requests. These include: a time extension for clarification under section 10(1)(a); a time extension for a large volume of records under section 10(1)(b); and, fees.

Once a request - however broad - is logged as received, it cannot be cancelled later on the grounds that it is unclear. To do so would be a contradiction of the public body's original assessment of the request and there is no provision in the legislation that allows this.

Section 5(1)(b) allows an applicant to make a request on behalf of another person – as per regulation 3 of the FOIPP Act – if they provide written proof of their authorization to the public body. For example, a mother states that she has custody of her 7-year old child and requests her child's records from the Ministry of Children and Family Development. The public body does not begin to process the request until the mother has provided a copy of the court disposition document that grants her primary custodial status.

Implications:

In the past, public bodies were required to open an access request as soon as it was received regardless of whether or not they could understand what the applicant was seeking or had proof that the individual had the right to be requesting records on behalf of a third party. This sometimes resulted in public bodies not being able to respond to the request within the 30-day response deadline. The new amendment will assist public bodies to meet their response obligations by permitting them to seek clarification of the request prior to the request being opened.

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Amendment #2 (to Section 7 of the FOIPP Act)

Section 7 is repealed and the following substituted:

7 (1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).

(2) The head of the public body is not required to comply with subsection (1) if

(a) the time limit is extended under section 10, or

(b) the request has been transferred under section 11 to another public body.

(3) If the head of a public body asks the commissioner under section 43 for authorization to disregard a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the application is made under section 43 to the end of the day a decision is made by the commissioner with respect to that application.

(4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs:

(a) the head of the public body excuses the applicant from paying all of the fees under section 75 (5);

(b) the head of the public body excuses the applicant from paying part of the fees under section 75 (5), and the applicant agrees to pay the remainder and, if required by the head of a public body, pays the deposit required;

(c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.

(5) If an applicant asks the commissioner under section 52 (1) to review a fee estimate or a refusal to excuse the payment of all or part of the fee required by the head of the public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the

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applicant asks for the review to the end of the day the commissioner makes a decision.

(6) If a third party asks under section 52 (2) that the commissioner review a decision of the head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the written request for review is delivered to the commissioner to the end of the day the commissioner makes a decision with respect to the review requested.

(7) If a person asks under section 62 (2) for a review of a decision of the commissioner as head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the request for review is delivered to the minister responsible for this Act to the end of the day the adjudicator makes a decision with respect to the review requested.

Summary of Amendment:

This amendment allows public bodies to stop working on access requests and stop the clock while waiting for a ruling from the Information and Privacy Commissioner related to those requests.

This amendment affects: section 43 applications (on whether a public body can ignore a high volume requester); requests for review by a third party (when they are challenging the decisions of public bodies); reviews of fee estimates, and on public body's decisions on requests for fee waivers (initiated by applicants).

The amendment also permits public bodies to stop working on a request until an applicant responds to the fee estimate issued by the public body.

The amendment requires that when public bodies have received a request for a fee waiver, they must respond to the applicant within 20 days of receiving the waiver request.

This amendment also corrects a flaw in the original drafting of the legislation that did not tie time allowances under section 23 – third party notification - into the thirty-day timeline set in section 7.

Explanation:

Previously, there were a number of ancillary processes involving the Information and Privacy Commissioner that resulted in the public body waiting for rulings. The public body could not “stop the clock” while the request was “out of its hands” so it often went over the 30-day timeline for responding to the request. This amendment ensures that, when these processes are activated, the clock stops until the issue is resolved and the public body can resume processing the request.

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Implications:

The amendment will eliminate situations where public bodies were unable to meet the thirty-day time requirement in the Act due to circumstances beyond their control – resulting in greater control by public bodies of their timelines.

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Amendment #3 (to Section 10 of the FOIPP Act)

Section 10 is amended by adding “or” at the end of paragraph (b), by striking out “; or” at the end of paragraph (c) and by repealing paragraph (d)

Summary of Amendment:

The amendment to Section 10 removes the extension for a third party asking for a review under Section 52(2) or 62(2).

Explanation:

Subsection (d) is no longer required because of the amendments to section 7.

Implications:

Removes a redundant provision.

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Amendment #4 (to Section 11 of the FOIPP Act)

In subsection 11(1) striking out “10 days” and substituting “20 days”.

Summary of Amendment:

The amendment extends the amount of time that a public body is allowed to transfer a request to another public body by an additional ten days.

Public bodies now have 20 days to transfer an access request to another public body – i.e., when it is discovered that the other public body has the records responsive to the request.

Explanation:

Under the former provision, public bodies only had 10 days to transfer a request to the other public body that held the records requested. Particularly for records that were not held by the public body that received the request, it often took more than 10 days to find out where the records might be found.

If the 10 days had passed, the public body could not transfer the request and had to inform the applicant that they were required to submit a new request to the other public body. This result frustrated the public body and did not assist the applicant.

Implications:

This amendment will reduce inconvenience for applicants and ensure that public bodies have sufficient time to accurately determine the location of the requested records.

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Amendment #5 (to Section 21 of the FOIPP Act)

Section 21(1)(a)(ii) is amended by striking out “of a third party,” and substituting “of or about a third party,”.

Summary/Explanation of Amendment:

This amendment will achieve the original intent of this exception (to protect the sensitive business information of third parties) by broadening the scope of the information that is eligible for protection. Previously, only business information that was provided by the company met the first part of the three-part test. Now business information that is provided by a third party or has been generated by the public body will also meet this test.

Implications:

The amendment will address an unintended consequence of original drafting by ensuring that business information that has been provided by a source other than the party the information is about will be provided with the same opportunity for protection as business information provided by the party itself.

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Amendment #6 (to Section 27 of the FOIPP Act)

Section 27(1) is amended by adding the following paragraph:

(a.1) the collection of the information is necessary for the medical treatment of an individual and the public body is not able

(i) to collect the information directly from that individual, or

(ii) to obtain authority under paragraph (a) (i) for another method of collection,

Summary/Explanation of Amendment:

This amendment will allow the collection of personal information from a third party (e.g., the friend or relative of an unconscious patient brought into an emergency medical facility) by allowing the indirect collection of personal information in potential life and death situations.

Implications:

This amendment will improve compliance with the Act by emergency room staff – who were often put in a difficult situation where they needed information about the unconscious patient to treat them but technically were not allowed to collect that information from the person who brought the person in to the medical facility.

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Amendment #7 (to Section 33 of the FOIPP Act)

Section 33 is amended

(a) by repealing paragraph (d) and substituting the following paragraphs:

(d) in accordance with an enactment of British Columbia or Canada that authorizes or requires its disclosure,

(d.1) in accordance with a provision of a treaty, arrangement or agreement that

(i) authorizes or requires its disclosure, and

(ii) is made under an enactment of British Columbia or Canada,

(b) by adding the following paragraph:

(f.1) to an officer or employee of a public body or to a minister, if the information is necessary for the delivery of a common or integrated program or activity and for the performance of the duties of the officer or employee or minister to whom the information is disclosed,

Summary/Explanation of Amendment:

The first portion of the amendment (sections 33(d) and (d.1)) will allow personal information to be disclosed where another statute “**allows**” the disclosure as well as “**requires**” it. The previous language had been interpreted narrowly to mean that personal information could be disclosed only when another act compels disclosure.

The second portion of the amendment (section 33(f.1)) provides a narrow authority for disclosure of personal information between public bodies when it is needed for common or integrated programs or activities and is required to perform public body duties.

Implications:

These amendments will retain the important protections related to the disclosure of personal information but will, in the first amendment, better achieve the intentions of disclosure provisions in statutes and, in the second, allow necessary disclosures for common or integrated programs.

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Amendment #8 (to Section 34(2) of the FOIPP Act)

Section 34(2) is repealed.

Summary/Explanation of Amendment:

Removal of this subsection will end the requirement for public bodies to submit lists of consistent purposes to the Minister responsible for the FOIPP Act. Such lists have not been compiled, submitted or published since the FOIPP Act's inception, and such an undertaking would not be economically or practically feasible.

Some have misinterpreted the requirement to mean that public bodies cannot have consistent purposes without publishing them – which is incorrect.

Implications:

Since the lack of a consistent purposes list has not affected the administration of the FOIPP Act to date, it is likely that the impact of the amendment will be minimal on public bodies. The creation of the Personal Information Directory (PID) and the publication in the PID of Privacy Impact Assessments (which include consistent purpose analysis) will actually provide the public with an enhanced understanding of the collection, uses and disclosures of their personal information.

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Amendment # 9 (to Section 43 of the FOIPP Act)

Section 43 is repealed and the following substituted:

43 If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that

(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or

(b) are frivolous or vexatious.

Summary/Explanation of Amendment:

This amendment will allow public bodies the right to ask the Information and Privacy Commissioner for permission to disregard frivolous or vexatious requests (added to the current more limited grounds of systematic or repetitious).

The current provisions do not provide sufficient relief from some types of “request campaigns” – some of which have significant financial impact on government.

Most other jurisdictions have the frivolous or vexatious standard.

The amendment has also been expanded to include correction requests in addition to access requests.

Implications:

The net effect of the amendment will be to improve compliance with the FOIPP Act by providing relief from requests from a single applicant (that have a frivolous or vexatious intent) and allow time to respond to requests from other applicants.

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Amendment #10 (to Section 49 of the FOIPP Act)

Section 49 (1) is amended by adding “and” at the end of paragraph (a), by repealing paragraphs (b) and (c) and substituting the following:

(b) the power to examine information described in section 15.

Summary/Explanation of Amendment:

This amendment will provide the Information and Privacy Commissioner with the ability to delegate any duty, power or function of the Commissioner except the power to examine law enforcement information.

This amendment was requested by the Information and Privacy Commissioner and recommended by the Legislative Committee.

Implications:

This amendment will allow the Commissioner to delegate responsibilities and assist in managing workload and fiscal restraint targets.

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Amendment #11 (to Section 56 of the FOIPP Act)

Section 56(1) is amended by striking out “must conduct an inquiry and may” and substituting “may conduct an inquiry and”.

Summary/Explanation of Amendment:

This amendment gives the Commissioner the authority to decide whether an issue must be resolved through formal inquiry, (e.g., in instances where the issue, or a very similar issue, has been resolved through previous order(s)).

This amendment was requested by the Commissioner and recommended by the Legislative Committee.

Implications:

The amendment prevents an applicant from creating procedural barriers for the Commissioner by requiring hearings on issues that have previously been settled. This will reduce the cost of administering the FOIPP Act as well as improve compliance with the FOIPP Act by the Commissioner and other public bodies involved in reviews.

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Amendment #12 (to Section 58 of the FOIPP Act)

Section 58(3) is amended

by repealing paragraph (a) and substituting the following:

(a) confirm that a duty imposed by this Act or the regulations has been performed or require that a duty imposed by this Act or the regulations be performed;

by repealing paragraph (e) and substituting the following:

(e) require a public body to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of a public body to collect, use or disclose personal information.

Summary/Explanation of Amendment:

This amendment is intended to address an unintended consequence of the originally drafted section. The previous wording required the Commissioner to dispose of an issue by order – even when he found that the public body had already complied with its duties.

The Commissioner would be required, for example, to order a public body to do an adequate search for a record and then be required to indicate that he had found that the public body had already conducted an adequate search.

Implications:

The amendment allows the Commissioner to avoid making an order where he has found that the public body has already responded appropriately.

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Amendment #13 (to Section 69 of the FOIPP Act)

Section 69 is repealed and the following substituted:

Personal Information Directory

69 (1) *In this section:*

“information sharing agreement” *means an agreement that sets conditions on one or more of the following:*

(a) the exchange of personal information between a public body and a person, a group of persons or an organization;

(b) the disclosure of personal information by a public body to a person, a group of persons or an organization;

(c) the collection of personal information by a public body from a person, a group of persons or an organization;

“personal information bank” *means a collection of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual;*

“privacy impact assessment” *means an assessment that is conducted to determine if a new enactment, system, project or program meets the requirements of Part 3 of this Act.*

(2) The minister responsible for this Act must maintain and publish a personal information directory to provide information about records held, and about the use of those records, by ministries of the government of British Columbia.

(3) The personal information directory must include a summary that meets the requirements of the minister responsible for this Act of the following information:

(a) the personal information banks that each ministry of the government of British Columbia holds;

(b) the information sharing agreements into which each ministry of the government of British Columbia has entered;

(c) the privacy impact assessments that each ministry of the government of British Columbia has conducted;

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(d) any other information the minister responsible for this Act considers appropriate.

(4) The head of a ministry must correct as soon as possible any errors or omissions in the portion of the personal information directory that relates to the ministry, and provide the corrected information to the minister responsible for this Act.

(5) The head of a ministry must conduct a privacy impact assessment and prepare an information sharing agreement in accordance with the directions of the minister responsible for this Act.

(6) The head of a public body that is not a ministry must make available for inspection and copying by the public a directory that lists the public body's personal information banks and includes the following information with respect to each personal information bank:

(a) its title and location;

(b) a description of the kind of personal information and the categories of individuals whose personal information is included;

(c) the authority for collecting the personal information;

(d) the purposes for which the personal information was obtained or compiled and the purposes for which it is used or disclosed;

(e) the categories of persons who use the personal information or to whom it is disclosed;

(f) information required under subsection (7).

(7) The minister responsible for this Act may require one or more public bodies, or classes of public bodies, that are not ministries of the government of British Columbia

(a) to provide additional information for the purposes of subsection (6), and

(b) to comply with one or more of the subsections in this section as if the public body were a ministry of the government of British Columbia.

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Summary of Amendment:

The amendment eliminates the requirement for the Directory of Records but retains the important portion of the publication – the directory of personal information practices of government. The FOIPP Act now specifies basic requirements for managing and reporting on personal information practices.

Explanation:

The Directory of Records (DOR) was intended to assist applicants to identify and locate records held by government and to report on personal information banks (banks of information retrievable by individual identifiers).

The original DOR took over 18 months to prepare (at a great cost to government) and was out of date by the time it was published. Applicants found it difficult to use and usually opted to contact public bodies to ask for help in identifying the records they needed.

It has been found that with government web sites, electronic government and proactive release strategies, the DOR, as a formal publication, is redundant.

What is most important, however, is transparent management of personal information held by government. The Personal Information Directory is the first of its kind in Canada and is a web-based publication that provides summaries of all Information Sharing Agreements, Privacy Impact Assessments and Personal Information Banks.

Implications:

Combined with the requirement for Privacy Impact Assessments, the public is better served by the PID than the personal information provisions of the DOR.

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Amendment #14 (to Section 72 of the FOIPP Act)

Section 72 is repealed.

Summary/Explanation of Amendment:

The public record index outlined in section 72 has not been published since the Act's inception nor have public bodies reported listings related to it.

It intended purpose, to provide the public with information about public records, is being accomplished more efficiently and effectively by Ministry web sites, electronic government and electronic service delivery initiatives, and proactive release policies (see amendment 13 above).

Implications:

The removal of the public records index will eliminate a redundant legislative requirement and have no real implications for the public.

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Amendment #15 (to Section 75 of the FOIPP Act)

Section 75(4) and (5) is repealed and the following substituted:

(4) If an applicant is required to pay a fee for services under subsection (1), the head of the public body

(a) must give the applicant a written estimate of the total fee before providing the service, and

(b) may require the applicant to pay a deposit in the amount set by the head of the public body.

(5) If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

(5.1) The head of a public body must respond under subsection (5) in writing and within 20 days after receiving the request.

Summary/Explanation of Amendment:

This first subsection (75(4)) allows public bodies to provide fee estimates **before retrieving** information and to place the request on hold until the applicant has agreed to pay. The amendment also codifies the current policy of requiring applicants to pay a fee deposit.

The second amendment (section 75(5.1)) requires public bodies to respond to requests for fee waivers within a specific timeframe of 20 days – ensuring that the consideration of a fee waiver is not used as a means of delaying responding to a request. There is currently no such time limit stated under the Act.

Implications:

The impact of this amendment should be minimal for most public bodies as it reflects policies/practices that are currently in use. However, public bodies will

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now only have 20 days in which to issue a response to an applicant's request for a fee waiver.

Amendment #16 (to Section 76 of the FOIPP Act)

Section 76 is amended

(a) in subsection(2)(i) by striking out, “the freedom of information directory or the public record index”

(b) by repealing subsections (3) and (4).

Summary of Amendment:

The wording removed from Section 76(2) was redundant given the amendments to section 69 of the Act.

Sections 76(3) and 76(4) are no longer needed as they have been replaced by section 76.1.

Impact of Amendment:

See section 76.1

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Amendment #17 (to Section 76 of the FOIPP Act)

Ministerial regulation making power

76.1 (1) *The minister responsible for this Act may amend, by regulation, Schedule 2*

(a) to add to it any agency, board, commission or other body

(i) of which any member is appointed by the Lieutenant Governor in Council or a minister,

(ii) of which a controlling interest in the share capital is owned by the government of British Columbia or any of its agencies, or

(iii) that performs functions under an enactment, and

(b) to designate or change the designation of the head of a public body.

(2) *The minister responsible for this Act may amend, by regulation, Schedule 3 to add to it the name of the governing body of a profession or occupation if*

(a) any member of that body is appointed by the Lieutenant Governor in Council, a minister or an Act, or

(b) the profession or occupation is governed under an Act.

(3) *For the purposes of this section, Schedule 2 or Schedule 3 means that Schedule, as amended by regulation of the Lieutenant Governor in Council, on the date this section comes into force.*

Summary/Explanation of the Amendment:

This amendment will simplify the addition/coverage of new public bodies – if they meet the stated criteria – and it will allow easier changes to the Schedule to reflect changes to the names of public bodies or the heads of public bodies.

Implications:

The addition of public bodies to Schedules 2 and 3 through Ministerial regulations will result in public bodies being covered by the Act in a more timely manner and increase access and privacy rights for British Columbians whose records are held by newly created public bodies.

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Amendment #18 (to Section 80 of the FOIPP Act)

Section 80 is repealed and the following substituted:

Review of Act

80 (1) *At least once every 6 years, a special committee of the Legislative Assembly must begin a comprehensive review of this Act and must submit a report respecting this Act to the Legislative Assembly within one year after the date of the appointment of the special committee.*

(2) A report submitted under subsection (1) may include any recommended amendments to this Act or any other Act.

(3) For the purposes of subsection (1), the first 6 year period begins on October 4, 1997.

Summary/Explanation of Amendment:

The original section 80 required that a review of the FOIPP Act be initiated by October 4, 1997 (four years after the FOIPP Act was proclaimed) and that the Committee conducting the review issue recommendations.

This initial requirement was completed so the original wording was no longer needed.

In response to the recommendation of the Legislative Committee for further reviews of the FOIPP Act, the amendment requires that additional reviews be conducted by a special committee of the Legislative Assembly every six years from the date the last review was initiated (October 2003).

Implications:

The FOIPP Act is the government's primary statement of its commitment to openness, accountability and privacy protection. The FOIPP Act affects every British Columbian and is administered by approximately 2000 public bodies. Periodic reviews will ensure that the public has a formal opportunity to comment on the administration of the legislation and that it remains current.

Further reviews will also facilitate linking with related legislation such as legislation governing privacy in the private sector.

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Amendment #19 (to Schedule 1 of the FOIPP Act)

Schedule 1 is amended

(a) by adding the following definition:

“day” *does not include a holiday or Saturday;*

(b) by repealing the definition of “personal information” and substituting the following:

“personal information” *means recorded information about an identifiable individual, and*

(c) by repealing the definition of “personal information bank”.

Summary/Explanation/Implications of Amendment:

Changing the definition of the word “day” from calendar to working days will give public bodies 30 actual working days to respond rather than the previous 30 calendar days (which often amounted to less than 20 working days). This will be particularly beneficial in months such as December when holidays significantly shorten the number of days a public body is actually open for business.

The amendment to the term “personal information” will shorten and simplify the definition and move the existing illustrative list to policy. This previous definition created confusion and will bring the definition more in line with the direction of private sector privacy acts.

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Amendment #20

Transitional and Consequential:

A modification in the method of calculating time under a section of the Freedom of Information and Protection of Privacy Act that occurs as a result of an amendment enacted by this Act applies only to a period of time that begins after the amendment to that section comes into force.

Summary/Explanation of the Amendment:

This is to ensure that the amendments apply only to processes that began after the amendments came into effect.

Implications:

This prevents the confusion that may ensue should new processes be applied to old requests that have already begun, and ensures fairness for all concerned.