



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

Protecting privacy. Promoting transparency.

October 8, 2015

Honourable Shirley Bond  
Minister of Jobs, Tourism and Skills Training  
and Minister Responsible for Labour  
PO Box 9846 Stn Prov Govt  
Victoria BC V8W 9T2

Dear Minister:

**Re: Bill 39 – Provincial Immigration Programs Act—OIPC File No. F15-63013**

I am writing to provide comments on Bill 39 – the Provincial Immigration Programs Act, which you tabled before the Legislative Assembly on October 6, 2015.

I understand the purpose of Bill 39 is to provide a framework to govern the province's involvement in selecting immigrants for the Provincial Nominee Program, in partnership with the federal government. The Bill also sets provisions to enable the collection, use, and disclosure of personal information in the operation of that program, as well as to identify fraud in relation to that personal information.

I am concerned that the Bill incorporates an express override of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") which is not necessary to achieve the objectives of the Bill.

Section 10 of the proposed Provincial Immigration Programs Act provides for the confidentiality of the identities of individuals who provide information to the director for any purpose under the Act. Section 10(2) takes the further step of overriding FIPPA with respect to that identifying information.

It is my belief that this override is unnecessary as the protection of the identity of the informant is already provided for in s. 22 of FIPPA, which requires that the head of a public body must refuse to disclose personal information where that disclosure would be an unreasonable invasion of a third party's personal privacy.

Specifically, ss. 22 (2)(f) of FIPPA states that, when determining whether a disclosure of personal information is an unreasonable invasion of a third party's privacy, the head must consider whether the personal information has been supplied in confidence.

In addition, ss. 22 (3) states that a disclosure is presumed to be an unreasonable invasion of a third party's privacy if, among others, either of the following apply:

- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law;
- (...)
- (h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party.

Therefore, in my view, it is likely that these provisions in FIPPA already provide adequate protection for the identity of third party informants.

I remain concerned about the proliferation of express FIPPA overrides in legislation and amendments to legislation that have been enacted in recent years, as each override weakens FIPPA as a whole. FIPPA is a carefully balanced statutory instrument which seeks to meet the important public policy goals of public bodies and of government, while protecting the rights of British Columbians to their privacy as well as to their access to information.

The use of an express FIPPA override removes these rights, which is a step that must not be undertaken lightly or without due regard to the need for such an override. It is particularly problematic where, as here, the objective of the override is already provided for by FIPPA.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, I am providing a copy of this letter to the Opposition critic for your ministry. In addition, a copy of this letter will be posted on my Office's website.

Sincerely,



Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia

pc: Shane Simpson, MLA  
Opposition Critic for Economic Development, Jobs, Labour and Skills

Athana Mentzelopoulos  
Deputy Minister, Ministry of Jobs, Tourism and Skills Training