



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

February 13, 2015

Honourable Amrik Virk
Minister of Technology, Innovation
and Citizens' Services
Room 346, Parliament Buildings
Victoria BC V8V 1X4

Dear Minister Virk:

Re: Bill 5 – Government Information Act; OIPC File F14-60070

I am writing to comment on Bill 5, the Government Information Act, tabled in the Legislative Assembly on February 12, 2015. I am encouraged that government is proposing legislation that will provide a framework for modern records management within government.

Information rights are of vital importance to citizens. Access to government information, and to an individual's own personal information, are essential elements of a transparent and accountable democracy. The right of citizens to control and access information and records is regulated by a carefully balanced legal framework that guarantees these rights, subject only to narrow statutory exceptions.

Comprehensive information management legislation and robust implementation are key to enabling these important rights.

Bill 5 provides modern information management legislation for the digital age and is a clear improvement over the current, antiquated *Document Disposal Act*, which was first enacted in 1936. However, as the opportunity to deal with information management legislation is an infrequent event, I believe it is important to provide for as robust a legislative framework as possible. I therefore offer the following recommendations to improve and strengthen the proposed legislation.

Foremost among my recommendations is the provision for a legislated "duty to document" key government actions and decisions in Bill 5. This was the main recommendation from my July, 2014 special report into the current state of government archiving in British Columbia, as well as my March, 2013 investigation into the increase in no responsive records replies by the provincial government in response to general access to information requests. It is only when key government actions and decisions are documented that access to information regimes and public archives can be truly

effective. It remains my view that a duty to document should be included in the Government Information Act.

I am concerned that Bill 5 does not explicitly provide for independent oversight of the management of government information. Legislation tabled in Ontario¹ adds the responsibility to meet record-keeping and retention requirements to Ontario's *Freedom of Information and Protection Privacy Act*, providing for oversight by the Information and Privacy Commissioner. Providing for similar independent oversight by my Office would ensure an independent safety valve for concerns over the new legislation.

I also recommend that Bill 5 provide for a mandatory information management advisory committee. Information schedules are the foundation of government records management. They set out which records have operational and historical value and should be archived versus which records do not have lasting value and may be destroyed, as well as the timelines for that disposition.

I am pleased that the Bill provides for the establishment of an information management advisory committee which would assist the Chief Records Officer with the approval of information schedules. However, I am concerned that such a committee is only optional, in that the Minister "may establish" the committee. In my review of similar statutes in other provinces I have found that most other provinces have mandatory records management committees.

I understand that one of government's primary goals with the Government Information Act is to streamline the approval of those schedules. However, I am concerned that providing for an approval mechanism which requires no consultation or oversight moves beyond efficiency and may leave too much discretion for the essential task of approving information schedules to one individual.

I am pleased that Bill 5 creates a digital archive for government information that resides within government. In my special report into the state of archiving in British Columbia, I recommended that government repatriate the BC Archives into government. This was because when the BC Archives became the responsibility of the Royal BC Museum in 2003, government essentially ceased to fund the transfer of public records into the Archive. While Bill 5 effectively addresses the future archiving of government records, it does not return the responsibility for the BC Archives to government. If the BC Archives remains orphaned outside of government it will remain subject to the evolving priorities of the Museum, which may not continue to accord with those of a public archive.

Finally, I recommend that Bill 5 be amended such that it would apply to "government agencies" by default rather than by the designation of Cabinet through regulation. As government agencies are defined in the Bill they are without question creatures of government engaged in the public's business. In my opinion the records of these

¹ Bill 179, Public Sector and MPP Accountability and Transparency Act, 2014.

agencies should be presumed to have the same records retention obligations as government, and the Government Information Act should only provide for their removal where an agency no longer meets the definition for government agencies under that Act.

In closing, while I believe the modern statutory framework established by Bill 5 is a progressive step in the field of information management, I also believe the incorporation of these recommendations would strengthen the legislation and ensure that it provides a lasting basis for the management of a vitally important public asset: government information.

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.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'ED', written in a cursive style.

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

cc: Doug Routley, MLA Nanaimo-North Cowichan, Opposition Critic for Citizen Services