

BC FOI News Story Index

Introduction

By Stanley Tromp – Right to Know Week, September 2019

Produced as a reference for journalism students, this Excel database contains a summary of every significant news article I could find that was produced from records obtained through requests under the B.C. *Freedom of Information and Protection of Privacy Act*, since the law took effect on October 1, 1993. (Many thanks to Thomas Crean, former treasurer of [BC FIPA](#), for providing the idea and initial support for this project.)

The search was extensive, through mainstream newspapers, magazines, radio and TV, as well as from small rural newspapers, student, alternative and online media. More than 1,900 articles were found, and placed in 24 categories. The *Index* is best viewed on a large screen, and the topics are word searchable, by Ctrl-F. Other features:

- Alongside several stories I have placed a {*} symbol, to draw attention to what I believe is an especially interesting, timeless or historically important FOI example (and time-pressed readers could skip ahead to these results). A few have led to investigations, regulatory changes, and relief or justice for affected persons.
- Many of the articles are not based upon FOI requests filed by journalists, *per se*, but from those filed by interest groups (most often environmental), or opposition parties, or the participants in events, who then in turn shared those records with the news media.
- The main focus of this database is the BC FOI law. Yet one can also click on the **red tab** at the bottom to see fascinating stories about this province produced via the Canadian federal *Access to Information Act* (1982) - mainly on records from the RCMP, Health Canada, and Environment Canada. Then, within that second red-bannered worksheet, one can scroll to its bottom, below the **orange bar**, to find articles produced via foreign FOI laws, mainly American. (One can click on the **blue tab** to return to the B.C. stories.)
- For FOI appellants and media lawyers: When contesting FOI obstructionism at inquiry before the information commission or courts, one can search this database for the types of records that have been released under FOI before, and therefore ideally should be again. This can also be done via the sectional index of OIPC rulings at - <https://www.oipc.bc.ca/rulings/sectional-index/>
- Taking the world view, such an FOI story database could be replicated in any province or state, indeed any country, and I would encourage this for the benefit of the public and journalism students (for it could also serve a source for story ideas). A non-profit group could hire a researcher, journalism student or retired reporter for this task, and perhaps update it yearly.

A fourfold purpose for the *BC FOI News Story Index*

(1) The Public Interest

I posted this in global Right to Know Week, whose purpose, since it started in Bulgaria in 2002, is to raise world awareness of the individual's right to access government information. I believe the value of FOI needs to be demonstrated rather than just asserted. If the public asks, "Why should we care if we have a good FOI law?", a kind of answer can be found here. Every British Columbian who browses this database for an hour will find it time well spent, I guarantee. To dispel the idea that FOI is mainly utilized by the big city press, I searched all B.C. local newspapers from the *Agassiz-Harrison Observer* to the *Williams Lake Tribune* to find dozens of local stories from every part of this province.

The vast range of FOI topics is quite daunting, covering the whole spectrum of society, from the cabinet office to Vancouver's Downtown Eastside, from farms to coal mines, from nursing homes to logging roads. Most powerful are the sections on the shocking mistreatment of children, seniors and animals. The old adage of journalism's mission being "to afflict the comfortable and comfort the afflicted" has been well realized here, with news that can bring some degree of justice to the powerless, and voice to the voiceless.

(The most incomprehensible remains Stewart Bell's story from FOI records in the *Vancouver Sun* of October 23, 1997: *Rapists, pimps allowed to keep jobs working with children*. Under the \$1-million B.C. government screening program for people working with children, 217 persons were declared "no-risk" who had criminal records for sexual assault, sexual interference, living off the avails of child prostitution, indecent acts, assault, kidnapping, and drug trafficking. The next day, the attorney general ordered an investigation of the criminal records review panel.)

For many readers, the most interesting and moving summaries may be found in Category 6 – Personal Requests (perhaps the best place to start reading the *Index*). These 70 stories are based on FOI requests that were filed not by journalists but by individuals or their family members often in some form of distress. Working to improve their lives, they obtained documents that helped some to clear their names of false allegations, or aided adoptees to find their true parents, or enabled others to obtain redress for childhood abuse, or workplace injuries, botched surgeries, hepatitis C infections, schoolyard bullying, land appropriations and rental evictions. It shows that obtaining records is not solely within the purview of experts, and their usage best demonstrates the professed goal of the FOI law – to empower the average citizen.

The first and lengthiest category concerns your money. In articles that may prompt reader groans and/or chuckles, FOI revealed how the public treasury was sapped as your tax dollars went to a \$572,000 severance for a former city manager for 19 months service; or \$9 million in severance for fired political appointees after the 2001 election (one gaining \$177,475 for seven months work); or a PR spin-doctor charging \$75,000 in moving expenses to relocate from Victoria to Vancouver; or two university deans gaining \$500,000 interest-free housing loans each; and so on and on.

Overall, these stories on issues as diverse as health, safety, financial waste, public security, and environmental risks share two common features: all reveal issues critical to the public interest (*i.e.*, not merely topics “the public might find interesting,” as some officials try to belittle it), and all were made possible only through FOI requests. They belie the most pernicious, self-serving myth of all – “What the people don’t know won’t hurt them.”

Here we can see politicians contradicted by policy experts, warnings not heeded, the hypocrisy of preaching one course in public and doing the opposite in private, draft reports watered down for their final public versions, and more (particularly for those adept at reading between the lines). In stark contrast to the bland, vague reassurances of government public relations, we encounter the sharp bite of reality as we read in graphic detail inspectors’ reports from the trenches.

The articles require a second look, for when they appear in daily media they may be forgotten within days, but many should not be, because we could be living continuously with the unresolved or recurring problems that they have raised. Moreover, not every FOI story necessarily reveals a scandal, but can still be valuable in educating the public on the scope of a little-known issue, and on how government operates. My fondest hope is that the public may finally realize that not everything good can be had for free online, and here see the value of FOI journalism, enough to financially support its production, and so to ensure its survival.

This catalogue is also a necessary and powerful corrective to a ruling party’s zealous loyalists and the bureaucracy’s professional obstructionists. These often try to trivialize and discredit the FOI law by fixating on what they call the “frivolous and vexatious” usage of it (e.g., “Those malicious and time-wasting gadflies swamp us with hundreds of systematic requests – at the taxpayers’ major expense - for every lunch and taxi expense chit, receipts for office carpet replacements, etc.”).

Such requests might indeed occur, but at the same time such critics always remain *silent* upon the many creditable revelations - of human abuse, wasteful spending, environmental damage, the personal cases cited in Category 6, and other grievous public harms – which were only made possible through FOI. The latter was surely the goal of premier Mike Harcourt who passed the law, and whom I told the Jack Webster journalism awards dinner in 1993 (as I well recall), “We passed an FOI law so you folks could do more stories.”

Moreover, while critics complain of the cost of administering the FOI law, it is really a miniscule fraction of the B.C. budget. In fact, the FOI system often saves public funds, because public outrage over misspent money – revealed via media FOI requests – has induced government to trim the waste and tighten controls.

A common theme that emerges from the articles is the inappropriate usage of public or private sector powers. Its revelation by FOI is usually (but not always) followed by some justice, restitution, and improvements. On such misdeeds, it has been well said, “sunlight is the best disinfectant,” a relief to the public from the darkness of ignorance, and one of the few ways to curtail some forms of strange wrongdoing that can only thrive in secrecy. Whenever officials claim they want to withhold records because of fear the public might “misunderstand” them, it is more often the case they fear the public will understand them all too well.

Yet with Canada's ineffectual FOI laws, we can produce far fewer FOI news stories than the American press does. In fact I often use the FOI law of Washington State, and the contrast in responses with B.C. is like night and day. The loss of hundreds of such untold and untellable news articles in the public interest that might have been possible amounts to a world of lost opportunities. This *Index* may bring an ironic, unintended result, whereby officials may say: "Look - this database demonstrates the law is working very well. Therefore no law reform is needed." No. The key point, which I cannot overstate, is this: If our FOI laws were raised to global standards, this story list could have been twice as long.

Overall, these stories can serve as an antidote against despondency or cynicism regarding the eroded B.C. FOI system, for they show how journalists can still overcome the barriers of bureaucratic and political resistance to produce valuable results. But imagine losing them. There are many such articles from the 1990s golden age of B.C. FOI (relatively speaking) that one simply cannot see any more today because officials have so undermined the FOI law and exploited its gaping loopholes. In response, many journalists (i.e., those that remain) have simply given up on the FOI process - a most regrettable error I believe. Our task should be to revive the spirit of the 1990s in which such fine work was possible. Why should we - or the public - accept anything less?

(2) To encourage needed FOI law reform

This second purpose stems directly from the first. It is well known that B.C. and Canadian FOI laws have fallen far behind the rest of the world (as detailed in my book on global FOI, *Fallen Behind*, updated this year at <http://www3.telus.net/index100/foi>). Urgently needed reforms have stayed frozen in a circuitous time warp for decades, while a longtime B.C. legislative columnist has well described the B.C. government's FOI record as "the shame of the province."

It is fundamental to keep in mind that FOI law should transcend political parties and ideologies. Yet with the B.C. Liberals in power, the prospects for FOI reform were - and almost surely would remain - absolutely hopeless. The NDP now in power fully acknowledged what needs to be done, for when in opposition for 17 years its MLAs such as Doug Routley introduced private member's bills that would have solved exactly these FOI problems (bills that were voted down by the Liberal majority).

So we had, perhaps naively, hoped for better with the B.C. NDP. Our faith was boosted in the last B.C. election campaign, when the NDP, in a questionnaire to FIPA on April 27, 2017, pledged to reform the law so as defeat the triple obstacle of oral government, the policy advice exemption, and subsidiary companies. (See: <http://www3.telus.net/index100/NDPreply2017>)

"We support the Act being expanded to capture subsidiaries created by public bodies," the NDP wrote to FIPA. They added that "BC Liberals' use of section 13 to deny even factual information has led to widespread call for reform," and "we support the Commissioner's advice . . . that the meaning of this section should be restored to its original, pre-BC Liberal, intent." When FIPA asked if its government would put a "duty to document" principle into law, the NDP

replied: “Yes,” and they recalled that while in opposition they had introduced several bills to “create a positive duty to document government actions.”

The public is still waiting, with no action. Last May the B.C. NDP proudly announced that it had “kept 80 percent” of its electoral pledges, with one media report echoing, “one thing you can't accuse them of is going back on their promises.” Not so.

The bureaucrats’ 2017 briefing notes to the incoming minister state on FOI: “Further review and consultation is required.” The authors must be well aware that public bodies already have had 20 years of opportunities to consult through four legislative reviews. Worse, there was - and is - no deadline set, which encourages this needless new exertion to expand ad infinitum. Yet the NDP still yield to their obstructionist officials’ eternal script with its vacuous three C’s: “These are very *complex* issues, which require more *consultations*, because of the risk of unintended *consequences*.” Incorrect. The reforms are simple, they have been studied to death for decades, and other nations have not been harmed by passing them (as per the global norm).

Rather than have excessive secrecy project dishonesty, weakness and insecurity, open government projects honest and competent administration, confidence in one’s own vision, and trust in the people. Premier Horgan needs to fulfill his party’s April 2017 reform promises, and so as not to confirm the old maxim of Charles De Gaulle: “Since a politician never believes what he says, he is always astonished when other people do.”

(3) An incentive and story idea generator for journalists

Beyond an archive, this catalogue (which can be updated continually) was also intended to be used as an active tool for both journalism students and working reporters.

They can browse through the subjects, in Column B, for story ideas, and the database is topic word searchable by Ctrl-F. Even with the state’s new FOI obstructionism, many records that were obtained before can often be retrieved again; this is at least worth trying. Reporters from other provinces may find it interesting also, for a certain type of record obtained by FOI from one crown corporation, health authority or city hall can likely be obtained from the same type of entity anywhere else.

Sometimes to enhance the story, the media post the original records on their websites, and the *Vancouver Sun*’s Chad Skelton laudably constructed searchable databases for the public on government salaries, and nursing home and daycare inspections.

Even in these challenging times, the news media still work as an indispensable bridge between government and the public; the vast majority of Canadians will never file an FOI request, and so, by default, the records that the media requests will generally provide what the public sees. Although the press in Canada generally file only between five to ten percent of FOI requests, the benefit to the public interest is felt far beyond these statistics.

Compared to regular media (transcribing council meetings or recycling press releases, with the agenda set by others), FOI journalists act proactively, breaking new ground, working against the grain. The general topic investigative reporter is the wild card of democracy,

responding to secretive governments in the spirit of the Colorado *Aspen Daily News* motto: “If you don’t want it published, don’t let it happen.” Enterprising sleuths shine needed spotlights into the darkest corners, work without fear or favour, and never mistake quantity of information for quality, nor swallow the official line.

Some FOI stories remind one of a lightening flash in the night, waking the public from its sleep, which is followed by a short pause, then a thunderclap (equivalent to the next day’s reaction to the misdeeds revealed by the story). To bypass public relations spin and “pack journalism,” such articles are welcomed by a public starved for substance - stark and needed factual correctives to a Trumpian, fact-free, “post-truth” age, where taxpayer-funded PR staff outnumber news reporters by 5-to-1 (an ever expanding ratio), and the remaining newsrooms are awash in oceans of social media, ads, entertainment and trivia.

(4) The historical record

The *Index* can be of interest for local historians, sociologists and political scientists also. Scrolling through it, some may have almost the sense of reading a parallel history, one perhaps more “real,” running concurrently to the official version the public was meant to see. (On occasion one might also wonder here if “those who do not remember the past are condemned to repeat it.”)

In this digital age, as time accelerates with ever shortening public attention spans and competition for our attention, it is all the more necessary to pause for an hour, and take stock of all the B.C. media have achieved with FOI over the past quarter century. Memories grow faded and distorted with time, but written records remain fresh and accurate.

(Some of the earliest articles were not posted online, and even most of those that were have long ago been deleted from the internet, and are certainly not retrievable by Google. In 1998 I helped compile a book for the BC Press Council entitled *For the Record* – a paper-based collection of 157 FOI stories produced in the first five years of the *Act*; the yearly numbers of stories greatly expanded for a short while after that, as more media began utilizing it.)

Last month’s events are overridden in the river of time, what is out of sight is generally out of mind, and yesterday’s articles are forgotten as “old news.” Yet many should not be because we could still be living with the problems that they have raised (e.g., a decade before the Peter German report on money laundering at B.C. casinos, the CBC revealed the problem in an FOI story of May 21, 2008). Even dated or resolved issues can still provide an interesting record of social history.

Another goal is to preserve and appreciate the work of writers here. (Barbara Yaffe of the *Vancouver Sun* has the distinction of being first, one month after the law took effect, producing an FOI-based story on November 6, 1993 on lavish spending by B.C.’s agent-general in London.) Some fine stories - which readers may have forgotten or missed upon their first publication - have received journalism awards, while others should have. Browsing this index makes us feel all the more acutely the retirement of such prolific FOI champions as Stewart Bell,

Larry Pynn, Kim Pemberton, Ann Rees, Chad Skelton, Janet Steffenhagen and others. Yet we can take much hope from the superb FOI articles being produced by the new generation of journalists such as Sam Cooper, Zac Vescera, Travis Lupick, Tyler Olsen and Bethany Lindsay.

When seen in such a database, the stories are re-contextualized; quality FOI articles that frequently appeared in the 1990s and were taken for granted now assume a new stature in these bleaker news media times, one that will likely only grow in the years to come. Some journalists who write “the first rough draft of history” can be needlessly modest at times, and their historical influence may be overlooked.

(“Another problem is that historians, disdainful of journalists and their work, often ignore them. . . . the old feeling, never abandoned in the newsroom or university, is that journalists are somehow inferior creatures, involved in practices akin to, say, poultry or mortuary science, not in a high and honourable calling.” - *Muckraking*, edited by Judith and William Serrin, 2002)

Professional newsgathering is *not* a sunset industry, even – rather especially - in a so-called “post-truth era.” While these times are extremely challenging, obviously, it can help us to glance backward to draw guidance from the pioneers. Some such articles here can galvanize us today, and are quite easily updated or replicated. It is vital for the public interest to pass on the FOI journalism torch to new generations of investigative reporters, of whom there will always be.

The B.C. media’s service to the openness cause was noted by the province’s first Information and Privacy Commissioner David Flaherty (even despite FOI-based news stories sharply critical of his travel spending), a privacy expert whose rulings, candidly speaking, were mostly deleterious to transparency. His words below are even more important today in this age of newsroom reductions than two decades ago. In his final annual report of 1998/99, in *Ave Atque Vale: Hail and Farewell*, he wrote:

I wish to close on a note of high praise for the media in this country, in at least partial response to the recurrent attacks on them by politicians in particular. I am not thinking here of the issue of trying to balance competing interests of accountability and privacy in the dozens of decisions that I have made in response to media requests for access to information. Nor am I selfishly reflecting my strong sense that the media would have had to be my ultimate defenders, as surrogates for the public, if the politicians and government of the province had chosen to turn against the *Act* by, for example, abolishing it. There have been times when I did not regard this as an idle threat.

At the end of the day, my privileged vantage point of the past six years has fully persuaded me that a free press is absolutely fundamental to the preservation and advancement of an open and democratic society in British Columbia and Canada as a whole. Becoming fully persuaded of what may strike some as a truism has been an added benefit and lesson from my experience in public office. It has been worth it.

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The Historical Context - high hopes, then erosion

We will bring in the most open and accountable government in Canada. I know some people say we'll soon forget about that, but I promise that we won't!

- *Newly elected B.C. premier Gordon Campbell, victory night speech, 2001*

Never in my wildest dreams did I expect that foot dragging and a penchant for secrecy would prevail to the extent that it has. No matter how good the law might be, it won't work if people in power are out to subvert it.

- *Former B.C. Attorney General Colin Gablemann, who introduced B.C.'s FOI law, 2007 speech*

When it was enacted in 1992 by NDP Premier Mike Harcourt, British Columbia's *Freedom of Information and Protection of Privacy Act* was hailed by some legal commentators as "the best FOI law in North America."

On October 1, 1993, the law came into effect - launching officials, politicians and journalists into uncharted waters, a brave new world. It worked fairly well for the first two years. Then, inevitably, the honeymoon soured when FOI requests began revealing serious governmental failings and scandals. The FOI law became, in effect, a victim of its own success.

Indeed, journalists soon had a vague foreboding that this freedom was too good to last. Harcourt's genuine support for transparency was sharply reversed when he was succeeded in 1996 by the NDP's Glen Clark, the only B.C. premier who openly mocked the FOI concept and never even feigned support for it. In fact, Clark made a joke (or was it?) at a media event that "If I had my way in cabinet, we wouldn't have an FOI Act."

Transparency-averse officials got the message from the top. If FOI usage had been only half as effective or avoided certain areas they might have left it alone, but such was not the case. The empire struck back - hard. The evasions began under the NDP but grew in ever more creative ways under the Liberals after their victory in 2001. (These are detailed at length in my 2016 report on the B.C. FOI law, *The Vanishing Record*, at <http://www3.telus.net/index100/foi>)

Moreover, officials are all too well aware of the economic stressors and onerous restructuring in the news media, and this reality has emboldened them to quietly push ever further to expand the boundaries of secrecy. All these factors have combined to create "a perfect storm" for FOI journalism, and to some it may seem almost miraculous how any good FOI stories are still being produced. Today, oddly, the FOI freedom of the Harcourt years, i.e., the Golden Age of B.C. FOI, feels about as detached and remote as the 1960s.

To be fair, transparency has improved on another front. Canadian leaders keenly endorse the new era of digital government, such as with the posting of information datasets online. To this end, Victoria posts salaries and ministers' daytimers online, along with Comptroller General audits (albeit partly redacted); the Vancouver Police Board starting posting summaries of its in-camera meetings; after I used FOI to obtain pollution violation reports from the B.C. Oil and Gas

Commission for news stories, it started posting these reports. I concede to e-government advocates that not all this work is inconsequential; for example, in 2015 the B.C. Legislature began posting MLA expense receipts. (“We asked for this for six years and it finally happened,” said the Canadian Taxpayers Federation.)

Unfortunately, this new activity can pacify or tranquillize the public with an illusion of transparency and empowerment, while its legal rights to obtain records through FOI laws are quietly regressing *at the same time*. Techno-utopians are dazzled by new technologies, first mistaking quantity of information for quality, then form for content, and finally the means for the ends. Yet a new deluge of self-selected government internet filler is no substitute for urgently needed FOI law reform. This is obviously a bait and switch ruse, an artful game of faux transparency.

Another switch is the government focusing reform on improved FOI speed and process. But if 100 pages of facts and analysis on a vital health topic are blanked out under Section 13 (which does occur), then what difference does it make if all those blank pages arrive in one week or one year, in PDF or Word format, by email or on paper?

Moreover, *Vancouver Sun* reporter Chad Skelton explained that most of the database stories produced at the *Sun* were based on data sets that the newspaper had to obtain by FOI requests and not by governments' routine release, “so we need the backstop of the FOI law.” This fact alone confirms the far lesser value of the voluntarily posted datasets than FOI laws. In sum, governmental social media and datasets would ideally be a useful supplement to - but not a substitute for - strong FOI laws, as a sugary dessert is advisable only after a full nutritious meal and not in place of it.

To be fair, one must note that the federal *Access to Information* process is even worse than B.C.'s at times. On the *Index's* red tab, one can see fine *ATIA* stories on the RCMP, a crucial issue as this police force oversees most of B.C.'s land mass. Yet this is nearly impossible now, because for the past decade, the RCMP *ATIA* office in Ottawa, claiming vast backlogs, is virtually frozen and behaves almost as though exempt from the law.

Some of my articles are here too; I recall my quest began as a Langara College journalism student in 1992, when the school's building manager refused to release a report on the seismic condition of the structure - as we wished to know if it could collapse on our heads during a quake - scoffing “It's technically too complex for you to understand.” (Bureaucrats today use the same specious line on the public about FOI reform).

The B.C. FOI law came into force a year later, which made such a refusal impossible thereafter. But it instilled in me a strong opposition to government secrecy from then on. Later when I was with *The Ubyyssey* student newspaper, we waged and won a costly five year legal battle to view the University of British Columbia's exclusive marketing contract with Cola-Cola - the same type of record that American colleges released without FOI.

(Regarding technology: I file requests by email now, but it may amuse those under age 35 to consider the 1990s pre-iphone era of BC FOI, when we used landline push-button phones, pre-Windows big desktop tubescreen computers, videocassettes. I would file FOI requests by

printing them out on my 12-pin dot matrix printer and sending them to Victoria by mail or via a grocery store's fax machine; and clip FOI stories from the subscription-based newspaper that was dropped on my doorstep.)

BC FOI – Closed for repairs

“For the most part, officials love secrecy because it is a tool of power and control, not because the information they hold is particularly sensitive by nature.”

- Federal Information Commissioner John Reid, Nov. 25, 1999

There are three vitally needed reforms for British Columbia's *Freedom of Information and Protection of Privacy Act*. (I regret having to describe this dismal situation at such length, but I only do so because it directly impairs the news media's ability to do their job.)

(1) *FOIPP Act* Section 13, policy advice and recommendations, is being broadly overapplied, and is now used as an omnivorous black hole that can swallow almost any record, and it expands every year. For example, it enabled the Provincial Health Services Authority to withhold its internal audits, and a ministry to black out 100 pages of facts on the human health impacts of LNG.

The flawed “Dr. Doe” court ruling of 2002 newly licensed officials to withhold all “facts and analysis” that were used to help craft policy advice, which was not the lawmakers' intent. This ruling has created incalculable havoc for B.C. FOI applicants over the past 17 years, as hundreds if not thousands of pages in the public interest have been newly sealed. Ministerial briefing notes of the sort that were released to me in full (with all facts *and* “recommendations” open) before 2004 were by 2012 being mostly withheld under Section 13.

One can hardly overstate the spreading blight of Section 13, the FOI law's kryptonite, a blank cheque that I define as the Bureaucratic Interest Override. This problem grows worse each year unchecked, and if we do not firmly correct it, then the FOI law may eventually be rendered almost meaningless, a façade. Former NDP Attorney General Colin Gablemann, who had introduced the *FOIPP Act* in 1992, said in a 2007 speech:

There has been an incredibly astonishing perversion in the last few years of the plain language meaning of the [Section 13] words: "advice and recommendations." This has resulted in the reversal of the legislature's intent, as originally expressed in the legislature and in the Act. . . . A government which believes in freedom of information would have introduced amendments in the first session of the legislature after that Appeal Court decision to restore the act's intention. This is an outrage and must be remedied.

Very worrisome is a comment from the premier while he was a candidate in the 2011 B.C. NDP leadership race. The *Vancouver Sun* reported (on February 11, 2011) that “Horgan wrote that he supported some changes to the Act, such as making university spinoff companies subject to FOI requests. But he was less enthusiastic about reforming the Act's policy-advice exemption, saying it had ‘stood the test of time.’” Wrongful practices such as this are never

legitimized merely by the passage of time. (If they were, then all the worst defunct features of the past would have been retained instead of dropped.)

The *Act* urgently needs to be amended to state that Section 13 cannot be applied for facts and analysis, only for genuine advice. The section also needs a harms test, as in Britain's FOI law, wherein a policy advice record can be withheld only if disclosing it could cause "serious" or "significant" harm to the deliberative process.

(2) Public bodies have been creating wholly-owned and controlled puppet companies to perform many of their functions, and manage billions of dollars in taxpayers' money, whilst claiming these companies are not covered by FOI laws because they are private and independent – a form of pseudo-privatization, or "information laundering."

Two B.C. health authorities are inexplicably FOI-exempt today: Providence Health and the First Nations Health Authority. FOI-free companies owned by B.C. crown corporations were related to two financial scandals of the 1990s: Hydrogate, and B.C. Ferries' \$450-million fast-ferries loss. In Ottawa the Canadian Blood Agency and the Nuclear Waste Agency are excluded from the federal FOI law.

More examples are BC Hydro's companies Powertech and Powerex. Worse, UBC Properties Investments Ltd. has quietly built up a new mini-city on the 100 hectares of public land with no accountability, and high-priced condos for sale instead of student rental housing, while students and residents have complained about its secrecy (under its various names) for 30 years. In 1999 the government exempted the Millennium SkyTrain project and Forest Renewal B.C. from the FOI law. Yet under most of the world's FOI statutes, any entity that is even half publicly-owned or performs a "public function" *must* be covered.

The *Act* needs amendment to state that its coverage extends to any institution that is controlled by a public body; or performs a public function, and/or is vested with public powers; or has a majority of its board members appointed by it; or is 50 percent or more publicly funded; or is 50 percent or more publicly owned. This includes public foundations and all crown corporations and all their subsidiaries.

(3) "Oral government" is a disaster for the public interest today. Here, government officials do not create or preserve records of their decisions or policy development, because they do not want such records to be made public through the FOI process.

Ken Dobell, then B.C. deputy premier and head of the provincial public service, frankly admitted so, famously telling an FOI conference in 2003 that he ran the government via informal meetings or telephone conversations, seldom keeping working notes of either. He did make thorough use of e-mail but said "I delete those all the time as fast as I can." He added: "I don't put stuff on paper that I would have 15 years ago. The fallout is that a lot of history is not being written down. Archivists of tomorrow will look for those kinds of things, and none of it will be there. It will change our view of history." Indeed. (Similarly, the 2010 Olympic Games Secretariat simply stopped recording minutes of its meetings after being peeved by my FOI requests for them, a thing that we incomprehensibly permitted.)

The scandal of the triple deletion of emails related to the missing women on the Highway of Tears was expertly analyzed in the report *Access Denied* in 2015 by the B.C. information commissioner Elizabeth Denham. Then former commissioner David Loukidelis thoroughly reviewed the matter in a new report, with exemplary recommendations for future record best practices - all of which should be implemented. The B.C. *FOIPP Act* should be amended to add a duty for public bodies to document key actions and decisions.

For now, the triptych of the policy advice exemption, subsidiary companies and oral government still holds sway in the British Columbian FOI field. This situation can produce troubling possibilities. For instance, under the current B.C. law, any future government could privatize or delegate a key health or environmental inspection task to a new FOI-excluded and so-called “private” company - which it nonetheless wholly owns and controls - and so its records could be locked away forever, with potentially disastrous results.

Even if covered, that company could diligently avoid writing down vital information, as a means of FOI-avoidance, per the deleterious growing drift to “oral government.” Finally, even if records were created, then all the facts gathered to help craft advice about the subject could be blacked out under Section 13. But this grim prospect is avertable through the NDP’s 2017 promised law reforms. Even if they insist that “trust us, we would never do those things,” this misses the point: it cannot guarantee that a future regime of another political stripe would not.

The Road Forward

Many impressive stories have been done in the first quarter century of FOI in B.C., and overall they have surely helped make this province a better place to live. But if we accept our decrepit Canadian transparency laws and subverted processes, will we see far fewer stories such as these? Or will we ensure improvements so as to make it possible that the best is yet to come? The choice is ours. Although it may appear a dystopian landscape for Canadian FOI journalism today, it is essential to view this situation as neither necessary nor inevitable. Most FOI misfortunes happen mainly because we permit them to happen.

This great province needs to raise its FOI law up to accepted global standards; to do so, B.C. legislators need not leap into the future but merely step into the present. What could be more reasonable than that? Democracy is about choice, and the essence of choice is informed choice, and without it our leaders cannot truly claim to govern with the consent of the governed.

I ended *The Vanishing Record* with: “I do not have a monopoly on the truth, nor does any other individual or institution. I do not have all the answers, and most FOI advocates never expect to get everything they want. But we can, and must, do far better. MLAs serve the public in their way as the news media do in ours. Here you have an opportunity to create a fine historical legacy for your constituents that will endure long after you depart office.” This remains just as true today.

Let us continue that fine legacy of the 1990s and build upon it. If you believe you should have the right to view records on health and education, or crime and the environment, or official spending and public safety - records whose production you paid for, and which were presumably created for your benefit – then speak out now, lest the government interpret the silence (rightly or wrongly) as consent or indifference. The hour is late.

To ask the NDP government to fulfill its FOI reform promises of April 27, 2017, you can phone Premier John Horgan at 1-250-387-1715, or email him at premier@gov.bc.ca

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Thomas Crean, and the B.C. Freedom of Information and
Privacy Association (FIPA)*

I have tried to note FOI credits wherever possible. If you have comments
or corrections, I welcome these at stromp@telus.net

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FINE EXAMPLES OF PUBLIC INTEREST BC FOI ARTICLES

- Chad Skelton of the *Vancouver Sun* produced public-searchable online databases of inspection reports on daycares, long-term care homes, drug rehab centres and group homes for the disabled.
- Under the \$1-million B.C. government screening program for people working with children, 217 persons were declared "no-risk" who had criminal records for sexual assault, sexual interference, living off the avails of child prostitution, indecent acts, assault, kidnapping, and drug trafficking. The next day, the attorney general ordered an investigation of the criminal records review panel. (Stewart Bell, 1997)
- Scores of educators who were disciplined by their employers for misconduct remain members in good standing with the B.C. College of Teachers, their records wiped clean. This includes sexual interference with minors; slapping, shoving and punching students; consuming alcohol during class; threatening and stalking colleagues; and accessing child pornography on a school computer. (Janet Steffenhagen, 2011)
- The *Vancouver Sun* obtained information showing that children in the care of foster homes were suffering physical and sexual abuse eventually leading to the closure of at least 14 homes because the children-in-care were being abused. (Kim Pemberton, 1995)
- At least four mentally disabled residents of Woodlands Institution were sterilized, according to internal documents obtained by the *Vancouver Sun*. These also confirm earlier *Sun* reports that some mentally disabled residents were physically assaulted, verbally abused and inhumanely treated while living at the provincial home for the mentally disabled in New Westminster. (Kim Pemberton, 2002)
- In 2004, when the B.C. government lowered the work start age to 12, the province became an outlier among developed states around the world. Nowhere else are there so few restrictions on the type of work children can do at such a young age. We know from interviews with children and FOI requests to WorkSafeBC that children under 15 are working in B.C. and some of them are getting hurt. (Catherine Evans, Adrienne Montani, 2016)

- More than half of the 60 school districts in British Columbia had unsafe levels of lead in drinking water sources in 2016 and early 2017. (Gordon Hoekstra, Lori Culbert, 2017)
 - A Bella Coola Valley man, criticized by provincial conservation officers for failing to put up an electric fence to protect his chickens, hunted down a mother grizzly bear before turning his sights on her three newborn cubs. The man shot the mother first, then two of the cubs who were run up a tree by his dogs, according to FOI documents involving cases in 2009 in which grizzlies were shot in supposed defence of people or property in B.C. (Larry Pynn, 2010)
 - Twenty horses died in as many months at Hastings Racecourse in Vancouver due mainly to bone fractures, according to provincial records. (Larry Pynn, 2011)
 - B.C. dairy farm inspections reveal animal welfare breaches; Overcrowding, tails accidentally torn off, dehorning without pain medication among the findings at one in four B.C. dairy farms, FOI documents show. Issues revealed during routine inspections by the B. C. Milk Marketing Board showed overcrowding, lame or soiled cattle, tails accidentally torn off by machinery, branding and dehorning of calves without pain medication. (Larry Pynn, 2016)
 - A Surrey environmental group obtained through FOI a draft report from the Boundary health unit which warned that the Money's Mushroom composting plant was emitting potentially cancer-causing compounds. (Larry Pynn, 1997)
 - Four youths fell off the Screaming Eagle chairlift at Grouse Mountain in one month. The B.C. Safety Authority, an independent agency of the provincial government, calls such events "reportable incidents" and recorded 228 of them over the past two seasons at downhill ski hills around B.C. (Larry Pynn, 2008)
 - British Columbia Coroners Service statistics obtained through FOI note that at least 54 people have died on SkyTrain tracks and platforms since 1985, yet there are no plans to erect barriers such as other cities have. (Bob Mackin, 2008)
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