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REPORT ON PRIVACY IMPLICATIONS OF THE USA *PATRIOT ACT* RELEASED

Victoria—Information and Privacy Commissioner David Loukidelis today released his office's advisory report on the privacy implications of the *USA Patriot Act*.

In releasing the report, Loukidelis expressed his appreciation for the significant contribution to the report of his special legal adviser, The Hon. Gérard V. La Forest, C.C., Q.C., retired justice of the Supreme Court of Canada, "an eminent privacy expert and expert on international law". Loukidelis added that, "Our report benefited greatly from his wisdom, especially in relation to privacy under the Charter and the implications of US law for compliance with BC's privacy law."

The OIPC's report follows a ten weeks of research and analysis triggered earlier this year by a BC Government & Service Employees Union lawsuit that raised concerns about personal information in the custody of a US linked outsource provider located in Canada being vulnerable to secret disclosure to the FBI under the *USA Patriot Act*.

The report concludes that outsourcing of public services to the private sector is not prohibited by the *Freedom of Information and Protection of Privacy Act*, but that, because there is a "reasonable possibility" of unauthorized disclosure of British Columbians' personal information under the *USA Patriot Act*, "rigorous other measures must be put into place to mitigate against illegal and surreptitious access." Loukidelis added that the report contains "significant recommendations for protecting British Columbians' personal information in the possession of private contractors from disclosure to the FBI under the *USA Patriot Act*." He noted that, "A number of our recommendations go beyond the measures the government recently introduced through Bill 73", the Freedom of Information and Protection of Privacy Amendment Act, 2004.

These are examples of the report's 16 recommendations:

- Legislation should be passed to make it an offence for a public body or a contractor to disclose personal information or send it outside Canada in response to a foreign court order, subpoena or warrant, with violation being punished by a fine of up to \$1 million or a term of imprisonment, or both;
- Public bodies should be required to ensure that outsourcing contracts contain provisions designed to preclude control by a US company over records containing British Columbians' personal information;
- The British Columbia government should adopt a litigation policy under which it will initiate or participate in legal proceedings abroad, including the US, to resist demands for personal information of British Columbians made by a US or other foreign court or agency;

- The British Columbia government and government of Canada should seek assurances from relevant US officials that they will not attempt to access, under the *USA Patriot Act*, personal information of British Columbians located in British Columbia;
- There should be an immediate and comprehensive audit of interprovincial, national and transnational information sharing agreements affecting all public bodies in British Columbia;
- There should be an immediate and comprehensive audit of all operational and planned data mining activities by all public bodies in British Columbia;
- Legislated controls should be passed to deal with information sharing and data mining activities, in order to better protect privacy and ensure transparency around these activities.

In releasing the report, Loukidelis said, “We have considered the complex issues with great care and tried to offer as responsible and effective a set of recommendations as we can.” He went on to say, “Our review of the *USA Patriot Act* and the outsourcing of public services in British Columbia has caused us to confront the most challenging and important privacy issues my office has faced since I took this job just over five years ago,” the Commissioner stated.

He also added, “We received more than 500 submissions and they forced us to go beyond the two questions I’d raised about the *USA Patriot Act* and government outsourcing. This is why some of our recommendations tackle wider issues, for example, information sharing between Canadian authorities and other governments.”

“Privacy risks don’t come only from the US,” the Commissioner noted. “Canada’s laws contain powers similar to those in the *USA Patriot Act*. When government enacts strong national security measures, it needs to make sure that human rights—including privacy rights—continue to be protected. In Canada, we have to be sure that national security powers are not used for ordinary law enforcement purposes. We have to watch for blurring of the lines between national security and ordinary law enforcement powers. This is why the upcoming Parliamentary review of the *Anti-terrorism Act* must ensure that the law properly balances public safety with privacy rights.”

The full text of the report can be found through What’s New at www.oipc.bc.ca.

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