



BY FAX

October 8, 2004

Hon. Joyce Murray
Minister of Management Services
Room 124, Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister:

**Bill 73—Freedom of Information and Protection of Privacy Amendment Act, 2004
("Bill")—OIPC File 21120**

I write in light of the Bill's First Reading yesterday.

As previously announced, our report on USA Patriot Act implications for compliance with the *Freedom of Information and Protection of Privacy Act* ("Act") will be released by the end of this month. Yesterday's media advisory for the Bill confirms that it implements the government's earlier commitment to amend the Act in relation to possible USA Patriot Act privacy risks.

I am at present focussed on finalizing the USA Patriot Act report and therefore do not propose to comment on the Bill now. My comments will be made as part of or in conjunction with the release of the USA Patriot Act report later this month. I am very likely to have comments on the Bill at that time and will make those comments publicly, as is our usual practice.

Yours sincerely,

David Loukidelis
Information and Privacy Commissioner
for British Columbia

cc: Hon. Claude Richmond, Speaker
Hon. Gary Collins, Government House Leader
Carole James, Leader of the New Democratic Party
Joy MacPhail, Opposition House Leader

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BY FAX

October 18, 2004

Hon. Joyce Murray
Minister of Management Services
Room 124, Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister:

***Freedom of Information and Protection of Privacy Act* (“FOIPPA”)—Bill 73
(Freedom of Information and Protection of Privacy Amendment Act, 2004)
 (“Bill 73”)—OIPC File No. 21120**

I indicated in my October 8, 2004 letter to you, that my comments on Bill 73 will be made concurrently with release of our report on USA Patriot Act implications of outsourcing. That remains the case. My office is reviewing Bill 73 at this time and I intend to release my comments and the report on USA Patriot Act implications of outsourcing on October 29, 2004.

I find, however, that an issue arises from Bill 73 that requires clarification to enable me to offer an informed and fair assessment. I raise this question in light of the government’s promise that Bill 73 contains “tough new legislative measures” that protect privacy and ensure that British Columbians enjoy the “highest protection” for privacy in Canada.

Specifically, I request clarification on the intent and effect of s. 23(2) of Bill 73. The government says Bill 73 will create new rules and protections around the outsourcing of public functions or services to private sector service providers. Section 23(2), however, provides a grace period during which outsourcing agreements can be entered into free of the new rules and protections. Section 23(2) reads as follows:

- (2) The new disclosure rules apply in relation to all contracts for which the contract commitment date is later than
 - (a) October 12, 2004, in the case of a contract entered into by the government or a ministry, or
 - (b) the date on which this Act receives Royal Assent, in the case of a contract entered into by another public authority.

Section 23 as a whole reads as follows:

Transitional -- existing contracts and research arrangements

23 (1) In this section:

"contract" means

- (a) a contract entered into by a public authority for the provision of services by a service provider within the meaning of the *Freedom of Information and Protection of Privacy Act*, or
- (b) a contract or other arrangement entered into by a public authority under which personal information is disclosed under section 35 [*disclosure for research or statistical purposes*] of the *Freedom of Information and Protection of Privacy Act*;

"contract commitment date" means

- (a) in the case of a contract that a public authority is legally obliged to enter into as a result of a completed binding competitive process, the date on which the process was completed, or
- (b) in any other case, the date on which the contract was entered into by the public authority;

"new disclosure rules" means Part 3 of the *Freedom of Information and Protection of Privacy Act*, as amended by this Act, other than section 30.3 [*whistle-blower protection*] of that Act;

"previous disclosure rules" means Part 3 of the *Freedom of Information and Protection of Privacy Act*, as it read before its amendment by this Act;

"public authority" means

- (a) the government,
- (b) a public body within the meaning of the *Freedom of Information and Protection of Privacy Act*, or
- (c) a director under the *Child, Family and Community Service Act*.

(2) The new disclosure rules apply in relation to all contracts for which the contract commitment date is later than

- (a) October 12, 2004, in the case of a contract entered into by the government or a ministry, or

- (b) the date on which this Act receives Royal Assent, in the case of a contract entered into by another public authority.
- (3) Subject to subsection (4), in relation to a contract for which the contract commitment date is on or earlier than the applicable date under subsection (2),
- (a) the previous disclosure rules are deemed to continue in force and apply to the contract, until the end of the term of the contract as it was on that contract commitment date, and
 - (b) the new disclosure rules apply to the contract after that time.
- (4) In relation to the services provided under a contract to which subsection (3) applies, the public authority must use all reasonable efforts to come into compliance with the new disclosure rules as soon as reasonably possible.
- (5) For certainty, the application of section 30.3 [*whistle-blower protection*] of the *Freedom of Information and Protection of Privacy Act* is not affected by this section.

As I read s. 23(2), Bill 73's new personal information protection rules do *not* apply to any outsourcing contract, in the case of a ministry of the government, entered into before October 12, 2004, five days after Bill 73 received First Reading (s. 23(2)(a)). My question is as follows:

1. In the case of the government and its ministries, which "contracts"¹ exist for which the "contract commitment date" is before October 12, 2004? In respect of each such contract: which ministry is involved, what services or functions are subject to the contract, what kinds of "personal information" are involved, does the service provider have any "affiliate" who is or could reasonably be expected to be subject to the personal jurisdiction of a United States court, what is the term (duration) of each contract, is there any option or right to renew the contract term and, if so, what is the term of each renewal and how many renewals are possible, does the contract contain any provisions respecting compliance with FOIPPA (including such as those contemplated by Appendices E through H of the government's July 23, 2004 submission to my office respecting the USA Patriot Act?) I ask the government to make inquiries to the questions set out above and, at the earliest possible opportunity, provide me with a response.

The new privacy rules also do *not* apply, in the case of any of the roughly 2,000 other public bodies in British Columbia, to any outsourcing contract entered into before Royal Assent is given to Bill 73. My question is as follows:

¹ Words and phrases in double quotation marks have the meanings given to them in Bill 73.

2. In the case of public bodies other than government and its ministries, which “contracts”² exist for which the “contract commitment date” is before Royal Assent? In respect of each such contract: which public body is involved, what services or functions are subject to the contract, what kinds of “personal information” are involved, does the service provider have any “affiliate” who is or could reasonably be expected to be subject to the personal jurisdiction of a United States court, what is the term (duration) of each contract, is there any option or right to renew the contract term and, if so, what is the term of each renewal and how many renewals are possible, does the contract contain any provisions respecting compliance with FOIPPA (including such as those contemplated by Appendices E through H of the government’s July 23, 2004 submission to my office respecting the USA Patriot Act?) I ask the government to make inquiries to the questions set out above and, at the earliest possible opportunity, provide me with a response.

The answers to these questions, in relation to public bodies of all kinds in British Columbia, would assist me to understand and comment on Bill 73 and how it protects privacy in the manner promised on its introduction by the government. This inquiry is made in a sincere attempt to understand the intent and effect of Bill 73 so that I may review and comment on it in light of all pertinent information.

I look forward to hearing from you as soon as possible.

Yours sincerely,



David Loukidelis
Information and Privacy Commissioner
for British Columbia

cc: Hon. Claude Richmond, Speaker
Hon. Gary Collins, Government House Leader
Hon. Geoff Plant, Attorney General
Carole James, Leader of the New Democratic Party
Joy MacPhail, Opposition House Leader

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² Words and phrases in double quotation marks have the meanings given to them in Bill 73.