Duty to Document

ISSUE

Public records transparency laws like BC's *Freedom of Information and Protection of Privacy Act* (FIPPA) are vitally important. The Supreme Court of Canada has [recognized](#) that the purpose of these laws is to facilitate democracy by providing citizens with the information they need to participate in the democratic process and by making it possible for the public to hold government officials accountable for their actions.

Transparency laws recognize that records produced and held by public bodies are *public records*, and they establish rights and procedures that allow members of the public to *access* these records. These laws do not establish requirements around the *creation* of records through the documentation of activities and decisions.

This creates a built-in limitation in our laws: **If records are not created in the first place, they cannot be subject to an access to information request.** The usefulness of public records transparency laws is dependent on the idea that public bodies are actively and systematically documenting their activities and retaining these records.

To make our transparency laws meaningful, we need to ensure that they incorporate a legislative duty to document.

RECENT BACKGROUND

- The 2016 all-party special committee that reviewed the FIPPA [recommended](#) that the Act be amended to incorporate a duty to document:
  - *Government should create a legislative duty to document within FIPPA as a clear indication that it does not endorse "oral government" and that it is committed to be accountable to citizens by creating an accurate record of its key decisions and actions.*
- The BC Freedom of Information and Privacy Association has consistently [emphasized](#) the importance of a duty to document in its submissions and advocacy around FIPPA reform.

- Several Information and Privacy Commissioners of British Columbia have recommended that FIPPA be amended include a duty to document.
- In 2016, NDP MLA Douglas Routley introduced a private member's bill, the Government Records Accountability Act. This bill would have created a duty to document under the FIPPA, but it was not passed.
- In 2017, the Liberal Government introduced the Information Management (Documenting Government Decisions) Amendment Act. This amendment states that the Chief Records Officer of a government body *may* issue directives and guidelines respecting the creation of records that adequately document a government body's decisions. The Information Management Act applies to all Provincial ministries and 41 public bodies. It does not apply to BC municipalities or local public bodies (of which there are over 2900).
- In 2019, the NDP Government further amended the Information Management Act, claiming at the time that this change "formalizes government's obligation to document decisions and helps ensure records of decisions are available and accessible". The amendments did not establish a duty to document under the FIPPA, and they do not apply to municipalities or local public bodies.

WHAT NEEDS TO CHANGE?

- BC needs a legislative duty to document. BC FIPA's preference (echoed by many organizations and advocates) is that the Freedom of Information and Protection of Privacy Act (FIPPA) should be amended to incorporate a true duty to document - a requirement that public bodies and service providers create and maintain full and accurate records of government information, including the records of any matter that is contracted out to an independent contractor.
- The Office of the Information and Privacy Commissioner for BC needs to be empowered to investigate and review matters related to alleged unauthorized destruction of records or government information and to ensure compliance with both the FIPPA and the Information Management Act.
- Our transparency laws - including the FIPPA - need to be further amended to incorporate penalties for persons who are found to have destroyed, disposed of, or concealed government records or information without proper authorization.