

Contractor's Guide to the *Freedom of Information and Protection of Privacy Act*

Purposes of the *Freedom of Information and Protection of Privacy Act* ("*FOIPP Act*" or the "*Act*")

The purposes of the *FOIPP Act* are to make public bodies more accountable to the public and to protect personal information. There are essentially two components of the *Act*:

"*Freedom of Information*"

- Gives the public a right of access to records; and
- Gives individuals a right of access to personal information about themselves.

"*Protection of Privacy*"

- Gives individuals a right to request correction of personal information about themselves; and
- Prevents the unauthorized collection, use or disclosure of personal information by BC Ferries.

How does the *Act* affect contractors?

Information you create or submit to us, even though you may have intended it to be confidential, may be disclosed under the *Act* if it is requested by a member of the public, unless the disclosure meets the requirements for an exception discussed later in this Guide.

Scope of the *Act*

The *Act* applies to all records in the custody or control of public bodies in British Columbia.

A "record" is anything upon which information is recorded or stored by graphic, electronic, mechanical, or other means. It includes such things as emails, letters, contracts, documents, maps, drawings, and photographs.

"Custody" generally refers to having physical possession of the records, which normally includes responsibility for access, managing, maintaining, preserving, disposing and providing security. Examples of records in our custody are letters, emails, proposals, bids or contracts.

"Control" can apply even if the records are held off site by you. Control means that BC Ferries has the power to restrict, regulate or administer the content, use, or disposition of the records. Two indicators of control are:

- A provision in a contract which permits BC Ferries to inspect, review, possess or copy specific records produced, received or acquired by you as a result of the performance of the services by you; or
- A contractual requirement for you to maintain the records or submit them to BC Ferries.

Records that are not in the custody or control of BC Ferries (for example, payroll and personnel records of your employees) are not subject to the *Act*.

What happens when BC Ferries receives a request for information?

Although the *Act* gives the public a right of access to information, exceptions to disclosure exist that may apply specifically to you. The *Act* protects third parties, such as contractors, by prohibiting disclosures that could harm your business interests or invade your personal privacy.

BC Ferries' FOIPP Office reviews each record to consider whether its release will harm a third party. If there is an obvious risk of harm, BC Ferries does not release the information.

If it is unclear whether the records should be released, BC Ferries will give you an opportunity to show that the disclosure could harm your business interests. You will be provided with a copy of the applicable records and asked for your views as to whether they should be disclosed or not. The *Act* gives you 20 working days to respond in writing to BC Ferries.

If BC Ferries determines that a risk of harm does not exist, we may advise you of our decision to release the information.

If the release of records is in the public interest, such as harm to the environment or public safety, then BC Ferries will notify you if practicable before disclosing the information.

When is information not released?

You must demonstrate that there would be real and significant harm to your business interests if disclosure were to occur. In order to be withheld from disclosure, all three parts of Section 21 of the *Act* must be met:

1. the record, if disclosed, would reveal your trade secrets or your commercial, financial, labour relations, scientific or technical information,
2. the information was supplied in confidence (see "Confidentiality"), and
3. the record, if disclosed, could reasonably be expected to:
 - result in significantly harming your competitive position or significantly interfering with your negotiating position,
 - result in similar information no longer being supplied and it is in BC Ferries' interest to receive this information,
 - result in undue financial loss or gain to any person or organization, or
 - result in revealing certain information related to a labour relations dispute.

What are your responsibilities regarding records in your custody?

A contract may require you to collect personal information, such as a person's name, address or opinions. If that information is used to make a decision directly affecting the individual, records must be made accessible to that individual for at least one year.

As a contractor in custody of personal information, you have an obligation to take reasonable security precautions to protect it against risks, such as unauthorized access, collection, use, disclosure, or disposal.

If records are under the control of BC Ferries, you must make them available to BC Ferries in accordance with the terms of the contract. BC Ferries may specify in your contract a requirement to make records available for a longer time period.

When records are requested pursuant to the *Act*, you must forward them to BC Ferries within the requested time frame. BC Ferries' FOIPP Office will review the records and determine which parts are excluded from disclosure.

Confidentiality

BC Ferries must comply with the *FOIPP Act*. As such, we are unable to promise the confidentiality of any document that is submitted to us. As mentioned, the *Act* does allow for protection of your information where disclosure could be harmful to your business interests. One of the requirements to meet the three-part test is that it must be shown that the information was supplied to BC Ferries in confidence. Therefore, when you consider it to be necessary, you should identify your information as "confidential". The statement should be explicit and in writing, and clearly identify your expectations. The information must be of the type which is normally kept confidential and past practice was to keep this kind of information confidential.

Before you bid, submit a proposal, or contract with BC Ferries, ask yourself these questions:

1. Are you prepared to have information you create or submit to BC Ferries disclosed to the public if it is requested under the *Act* and is not covered by an exception?
2. Do you understand which records will be under the custody or control of BC Ferries?
3. Will you be collecting, accessing, processing using, disclosing, or storing personal information?
4. Are you familiar with the security standards for storing personal information?
5. Do you understand your responsibilities regarding records in your custody?

If you are thinking about doing work for BC Ferries, consider the implications of the *Freedom of Information and Protection of Privacy Act*. Discuss your concerns with your contact at BC Ferries, or contact BC Ferries' FOIPP Office at:

FOIPP Office

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