

LIDSTONE & COMPANY

BARRISTERS AND SOLICITORS

MEMORANDUM

TO: Clients
FROM: Lidstone & Company
DATE: March 27, 2020
RE: Freedom of Information
FILE: 99999 - 044

Further to our bulletin of March 26, 2020 an additional ministerial Order was issued by the Honourable Anne Kang, Minister of Citizens' Services late in the day on March 26, 2020 in response to the COVID-19 pandemic. [Ministerial Order 85/2020](#) amends the limitations of section 33.2(a) and (c) of the [Freedom of Information and Protection of Privacy Act](#) R.S.B.C. 1996, c. 165.

Ministerial Order 85/2020 is directed to health care bodies and public bodies. Under FOIPPA a public body includes local governments. The first section of the Order only applies to health care bodies. The second section applies to local governments.

Section 33.2(a) permits the disclosure of personal information for the purpose for which it was obtained or a use consistent with that purpose. Section 33.2(c) permits disclosure to an officer or employee of the public body or to a minister if the information is necessary for the performance of their duties. However, such disclosure under either section is usually only permitted within Canada.

Ministerial Order 85/2020 extends the ambit of sections 33.2(a) and (c) and permits that disclosure inside or outside of Canada using third-party tools or applications. That permission is subject to certain conditions set out in the Order.

The Order will permit a broader range of IT solutions to the problems of using various tools to enable communications and collaboration for those working remotely. So, for example, online conferencing tools might be used for conferences or even closed meetings. However, there is an obligation on the head of the public body to be satisfied with the security and limited disclosure of personal information when using such tools or applications.

The Order is in effect now and will remain in effect until June 30, 2020 unless rescinded or extended by the Minister.

Note as well the Office of the Information and Privacy Commissioner (“OIPC”) to grant public bodies a 30 day extension to respond to FOI requests received between March 1, 2020 and April 30, 2020. The full decision is available online: <https://www.oipc.bc.ca/news-releases/2399>.

If a public body decides to make use of this extension, it must notify the applicant of the extension (in accordance with section 10(3) of the Freedom of Information and Protection of Privacy Act[“FIPPA”]). In addition, the public body must provide the OIPC with a list by June 30, 2020 of all such extensions that it uses. This extension option adds to a public body’s usual options regarding extensions, so it is still open to a local government to also grant itself an extension under FIPPA s. 10(1) and apply to the OIPC under FIPPA s. 10(2) for further permission to extend a response deadline.