

BRIEFING NOTE

FOIPPA: FOI Requests and Legal Proceedings

91% of Canadians have expressed concerns about how their data is being used. To address these, legislation continues to be passed on the Federal and Provincial level, to allow individuals to make freedom of information (“FOI”) requests to learn more about what a public body does, and what information the public body has.

The Office of the Information and Privacy Commissioner for British Columbia has highlighted the FOI system’s important role in maintaining the public’s trust in Canadian institutions.

On May 28, 2026, the BC government passed Bill 9, the *Freedom of Information and Protection of Privacy Amendment Act, 2026*, which makes certain changes to the *Freedom of Information and Protection of Privacy Act (the “Act”)* and applies them retroactively.¹ The BC Government has stated that the point of the retroactively applying amendments is to improve the FOI experience for applicants through making the system more efficient and transparent, although some groups have voiced their concerns that the amendments are instead weakening access to information in the name of efficiency.²

One such amendment limits the scope of FOI requests to those where the public body can identify the record within a reasonable period of time. The addition to s5(1)(a) now reads the section as (emphasis added):

To obtain access to a record, the applicant must make a written request that provides enough detail to enable an experienced employee of the public body, with a reasonable effort and in a reasonable amount of time, to identify the record sought,

Of relevance to litigation, the amendments include the addition of subparagraph (e) to section 3(5) of the *Act*. Section 3 of the *Act* sets out the application of Part 2; the access to information rights. Subsection (5) lists various types of information to which Part 2 does not apply.

¹ Bill 9, *Freedom of Information and Protection of Privacy Amendment Act*, 43rd Leg, 2nd Sess, British Columbia, 2026 (assented 28 May 2026), SBC 2026, c 19 (https://www.leg.bc.ca/parliamentary-business/overview/43rd-parliament/2nd-session/bills/3rd_read/gov09-3.htm).

² British Columbia, Citizens’ Services, *Improving digital service delivery with FOIPPA amendments* (Government of British Columbia, 26 February 2026, at <https://news.gov.bc.ca/33402>); BC Freedom of Information and Privacy Association (FIPA), “2026 Bill 9 Weakens Access in BC”, <https://fipa.bc.ca/2026-bill-9-weakens-access-in-bc> (accessed 11 June 2026); K. LaPointe, “Bill 9 shrinks B.C.’s right to know”, *Richmond News* (12 March 2026) <https://www.richmond-news.com/economy-law-politics/kirk-lapointe-bill-9-shrinks-bcs-right-to-know-11996343> (accessed 12 June 2026).

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The May 28, 2026 amendments include adding an additional class of records that is now exempt from the Part 2 access rights:

(5) Part 2 does not apply to the following:

(e) a record that the public body, the Attorney General or the government of British Columbia is required by law, as part of a proceeding, to produce, list or identify

(i) to the applicant, or

(ii) in the case of an applicant who is acting on behalf of or under the direction of another person, to that person, and

(5.1) A reference in subsection (5)(e) to a record that is required by law to be produced, listed or identified as part of a proceeding includes a record that is not specifically listed or identified, but that falls within a general class of records that is listed or identified as part of the proceeding

While the subsection does not appear to have been publicly debated by the Legislature or relevant Committees, it is possible that the provision was intended to prevent parties from circumventing limits on document disclosures in litigation by making FOI requests. In particular, it may have been designed to prevent parties from requesting records that a Public Body (as a party or non-party to said litigation) was already required to produce in a more constrained capacity as required using the relevance test under Rule 7-1(1)(a).

Importantly, it does not appear to curtail the ability of parties in litigation to make FOI requests of non-party Public Bodies that have not already been ordered to produce documents.

During the Legislative meeting on May 6, 2026, Member Rob Botterell from the BC Green Party advocated for a hoist of Bill 9 to allow for further consultation on FOIPPA's amendments. Member Botterell highlights that for s3(5)(e):

“There’s been no consultation with the Trial Lawyers Association of BC, with the Canadian Bar Association, or the broader public around the implications of this broadened exemption. And from a[n] evidentiary point of view, there has been no data gathered regarding how many FOI requests were made in the past year that would be excluded from the Act if this amendment were enforced and what [] metrics there are available.”³

Whether Member Botterell’s fears are well founded remains to be seen, however on our reading, the Act’s s3(5)(e) does not appear to have adversely altered the relationship between litigation and FOI requests.



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³ British Columbia, Legislative Assembly Afternoon - House, *Hansard*, 43rd Leg, 2nd Sess (6 May 2026) (Rob Botterell) at 3:01:23 pm to 3:02:14 pm (<https://videoarchive.leg.bc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/0/0/15955?viewmode=3&mediastarttime=20260506133000&mediaendtime=20260507035510>).

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