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April 13, 2015

Honourable Suzanne Anton
Attorney General and Minister of Justice
Ministry of Justice
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9V1

Dear Minister Anton:

**Re: Bill 20 – Election Amendment Act; OIPC File F15-60984**

I am writing to provide my comments on Bill 20 – the Election Amendment Act, which you tabled before the Legislative Assembly on March 24, 2015.

Provisions in the Bill that amend ss. 51(2), 96, and 97 of the *Election Act,* would require election officials to provide a list of voters to candidates, their representatives or political parties, with information about which individuals on the list have voted (voter participation information). This information would be disclosed after advance voting, during general voting, or after an election or by-election.

Government has stated that these amendments are intended to address low voter participation and are in response to the Chief Electoral Officer's recommendations for legislative change in his October 2014 report.

In the current voting process, candidate representatives observe voting and relay information about who has voted to their campaigns. This practice facilitates candidates' "get out the vote" activities on election day. In his report, the Chief Electoral Officer noted that candidates are experiencing challenges finding volunteers to act as representatives and this limits the candidates' ability to identify supporters who have not voted and encourage them to do so. Therefore, the Chief Electoral Officer recommended amendments to ss. 96 and 97 in order to ensure that all candidates have access to a complete and accurate record of voter turnout information during the voting period.

I fully support the need to address low voter participation and I recognize that the purpose of the ss. 96 and 97 amendments is to increase voter turnout in a manner that is controlled by Elections BC and fair to all candidates. However, it is important to ensure that personal information disclosed to candidates during advance and general voting is only used for this purpose.

The amendment to s. 51(2), however, extends beyond the objective of increasing voter turnout. This is because it authorizes the release of voter participation information to political parties *after* an election or by-election. Unlike the disclosures discussed in the previous paragraph which codify an existing practice and are directly tied to getting out the vote on voting day, the purpose of this disclosure is for political parties to receive personal information in a comprehensive and accessible format after voting day in order to perform analytics and other uses. This disclosure was not recommended by the Chief Electoral Officer and the purpose of the disclosure is not directly tied to getting out the vote. It is also not a disclosure allowed by most other provinces in Canada.

The original reason the Legislature authorized Elections BC to compile a list of voters was for the purpose of administering elections. I am deeply concerned that the proposed amendments allow for other uses and expand the already broad ability of political parties to collect information about voter participation. It would also certainly exceed what British Columbians anticipate when they provide their name to Elections BC given I do not believe there has been any public consultation on this expanded use of the voters list.

If this amendment were to proceed, Elections BC would be disclosing personal information that is likely to be linked with other information in political party databases and elsewhere. This linking, and the associated analytics, can be used for creating voter profiles, targeting voters, fundraising, sharing data across systems for secondary purposes, collecting non-consensual information, inappropriate communication from parties, and other intrusive uses. I am not persuaded that any of these uses are consistent with the foundational purpose for which the compilation of the list was originally permitted.

**Recommendations**

Given the above, I urge government to withdraw the proposed amendment to s. 51(2)**.** Personal information compiled for efficiently administering elections should not, from a privacy point of view, be provided to political parties for their broader use.

However, if the s. 51(2) amendment does proceed, there must be clear limits on the use and disclosure of this personal information by political parties. For example, permitted use of this information for “electoral purposes” as set out in s. 275 of the *Election Act* should be clearly defined and political parties should be prohibited from using the information for commercial purposes or disclosing this information to any other organization or public body.

I would also recommend that Bill 20 require that voter participation information disclosed pursuant to ss. 96 and 97 be destroyed following the election.

The *Election Act* authorizes the Chief Electoral Officer to make regulations regarding the use, disclosure and management of the list of voters. I recognize this critical role and should Bill 20 be passed without amendments to ss. 51(2), 96 and 97, I will pursue

discussions with the Chief Electoral Officer to offer my perspective as to how new regulations can protect the personal information of BC voters. For example, the regulations should require political parties to develop a policy regarding their use of the list. The policy should be filed with Elections BC, and should describe the authorized use and distribution of the list, the specific responsibilities for users of the list, and the safeguards taken to secure that list.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, I am providing a copy of this letter to the Opposition critic for your Ministry. In addition, a copy of this letter will be posted on my Office's website.

Sincerely,

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Leonard Krog, MLA Nanaimo
Opposition Spokesperson for Justice (Attorney General)

Keith Archer, Chief Electoral Officer