OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

October 9, 2019

Honourable David Eby, Q.C.
Attorney General
PO Box 9044 Stn Prov Govt
Victoria BC V8W 9E2

Honourable Selina Robinson
A/Minister of Citizens' Services
PO Box 9068 Stn Prov Govt
Victoria BC V8V 9E2

Dear Minister Eby and Minister Robinson:

Re: Bill 35—Miscellaneous Statutes Amendment Act (No. 2), 2019;
OIPC File F19-80600

I am writing to provide comments on section 22 of Bill 35 — Miscellaneous Statutes Amendment Act (No. 2) (Bill), which you tabled in the Legislative Assembly on October 7, 2019.

The Bill seeks to amend s. 33.1 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The proposed amendments would expand the authority of public bodies to disclose personal information outside of Canada in limited circumstances. I understand the purpose of s. 22 of the Bill is to facilitate the use of email, spam filtering, and other technological processes that include specific functions that require temporary processing and storage of information outside of Canada, notably through the use of cloud-based services. As laudable as this goal is, the provisions as tabled are broader than necessary to achieve this goal. I therefore strongly urge the following amendments to the Bill, which would better protect British Columbians' privacy while serving the amendments' goal.

The proposed s. 33.1(1)(p.1)(i)(A) would permit disclosure of personal information if necessary for the processing of information and if that processing does not "involve the intentional access of the information by an individual". This language is too permissive. It should be replaced by the following: "permit any individual to have access to personal information in the ordinary course of the processing".

The language of proposed s. 33.1(1)(p.1)(i)(B) authorizes the storage of "personal information that is metadata" outside of Canada. Stronger limits need to be placed on this. As worded there is no limit placed on the storage of personal information that is metadata. The authority for the storage of metadata outside of Canada should be limited to "the minimum period of time that is necessary to complete the processing" of this stored information. This would make it consistent with personal information temporarily accessed outside of Canada when processed.

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Privacy can also be better safeguarded in proposed s. 33.1(1)(p.2)(iii), which states that a public body need only remove or destroy personal information in individually identifiable form from metadata that is electronically generated “if practicable". This wording should be replaced with “unless it is not possible to do so”.

In addition, this amendment refers to metadata that "describes" an individual’s interaction with an electronic system. I am concerned that the term “describes” is vague and potentially broad. To eliminate doubt, the term “describes” should be replaced with "is generated by".

Last, to promote transparency, accountability and certainty in proposed s. 33.1(1)(p.2)(iv), the words “without the express authorization of the public body” should be replaced by “without the prior written agreement of the public body”.

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 critics for your ministries in addition to your deputies. A copy of this letter will also be posted on my Office’s website.

Sincerely,

ORIGINAL SIGNED BY

Michael McEvoy
Information and Privacy Commissioner for British Columbia

pc: Richard Fyfe QC
Deputy Attorney General

Jill Kot
Deputy Minister, Ministry of Citizens’ Services

Michael Lee
Official Opposition Critic for Attorney General

Steve Thompson
Official Opposition Co-Critic for Ministry of Citizens’ Services

Adam Olsen
Critic for Ministry of Attorney General and Ministry of Citizens’ Services