



August 14, 2013

The Honourable Andrew Wilkinson
Minister of Technology, Innovation and Citizens' Services

BY e mail: CitizenEngagement@gov.bc.ca

Dear Minister Wilkinson:

Re: Feedback on Terms of Reference for ID Card consultation

We are writing to you on behalf of the BC Civil Liberties Association (BCCLA) and the BC Freedom of Information and Privacy Association (FIPA) to set out our concerns about the Terms of Reference for the consultation your ministry is conducting regarding the BC Services Card.

Thank you for setting out some of the government's aspirations for the implementation of the card and the Government 2.0 plan more generally, and for setting out the Terms of Reference for the proposed consultation.

The White Paper states that the government is pursuing "a strong and legitimate public process" and that "Where digital services and the B.C. Services Card are concerned, our assumptions and rationale need to be tested."

Unfortunately, that is not what is being offered. It appears the consultation you are proposing will be essentially a focus group for the selling of the ID card program to British Columbians, unless the Terms of Reference are substantially modified.

We will deal with each of the elements of the consultation below.

B.C. Services Card User Panel (the Panel)

The Panel appears to be the primary focus of the consultation, and it will be receiving input from both the experts and the general public in order to provide the recommendations the government is seeking.

On the surface, the panel appears to have some similarities with the Citizens Assembly on Electoral Reform. The Citizens' Assembly was a much lauded innovative form of consultation first used in BC to examine the possibility of reforming the electoral system.

Members were selected using a random process, experts were brought in to inform the Assembly members about various aspects of electoral systems both domestic and international, and it was free to make recommendations as it saw fit.

That is not what is on offer here.

First, it is not clear how the random selection will take place. Adjustments for “age, gender and geography” are planned, but it is not clear how large a pool will be used to arrive at the final membership of the Panel. Nor is it clear if the group from which Panel members will be selected is going to be the population at large, or merely those who volunteer to take part. Both these factors will have an important effect on how representative the Panel will be.

Second, unlike the Citizens’ Assembly, the Panel will only be allowed to make a limited range of recommendations. In particular, the Panel will not have the option of recommending either the elimination of the combined BC Services Card or of the government’s ID management plan.

This means the Panel will be prevented from recommending either of those options, even if they are of the view that shutting down the program is the best option, after reviewing the evidence and opinions presented to them. This hardly qualifies as a test of the “assumptions and rationale” behind the program. It actually indicates a lack of confidence that an open process would result in support for the program as currently devised.

Third, the Panel is being consulted after the program has been designed and at least partly implemented. The Citizens’ Assembly was convened to help design the system, so that the system would reflect the input of British Columbians generally.

It may have been possible to do this at one point, but the government has consistently pushed its vision as the only way forward, with no alternative being acceptable or possible.

In 2009, then-Information and Privacy Commissioner Loukidelis set out his concerns about the advance of data linkage initiatives in the Government of British Columbia, and urged consultations before proceeding further down the path.

“It is certainly important that government not move forward with any legislated changes in this area unless and until there has been a full public consultation in the form of a position paper published by the government, followed by meaningful, extensive stakeholder consultations. Something in the order of a White Paper process would be appropriate.”

OIPC Annual Report 2009 p. 9

The timing of the process creates the appearance that the government is using it to confer a degree of legitimacy on a program that could have sweeping implications for the rights of British Columbians, and which has not been subject to any genuine consultation.

Who will be advising the Panel?

The Chair and facilitator will be hired by the government, but will be ‘independent’. Whoever they are, they will have to adhere to the process and mandate, including the Panel’s inability to recommend rejection of the government’s plan. That restriction will likely result in a number of qualified candidates declining to become involved in a process designed to achieve a pre-ordained outcome.

This will be important, as one of the roles to be carried out by these individuals will be “managing submissions from interested parties on behalf of the Panel members”, and

“penning the final report and ensuring recommendations are within the mandate for the Panel.”

In effect, these two individuals will write the report, and we understand that they will have to ensure that it contains no mention whatsoever of any indication that the Panel thought the program should be halted or wound up, regardless of the evidence or the actual views of the Panel members.

The White Paper also states that the Chair and Facilitator “may seek advice on any of these matters”, but it is not clear what resources will be made available to these individuals to pay for advice. Certainly “advice from the Province” should play a role, but it should not be the sole source for advice. The White Paper states that “the Chair and Facilitator are empowered to make the final decisions”, but without the ability to get independent advice on these issues their ability to properly formulate a decision will be compromised.

Open Public Input

Input from the general public appears to be only collected electronically through a form of “digital engagement”. This process would restrict public input to either responding to scenarios put forward by the government, or asking for suggestions on using the BC Services Card to improve services. It does not appear that any member of the public will be able to speak on their views of the utility of the card, nor on concerns they might have with it in terms of the protections of their personal information or anything else.

In addition, comments from the public will only be accepted via email, with the exception of a few selected groups of the Province’s choosing who will be allowed face-to-face input. This means that for the average British Columbian to be able to have a voice in this process, they will need Internet connection and an email address. The most recent research from Statistics Canada indicates that only 79% of Canadian household actually have an Internet connection, and only 54% of households in the lowest income quartile have such access. This means that the most marginalized British Columbians, who likely will be most affected by the Services Card, are the least able to voice their concerns in this consultation.

It is not clear that the feedback from this process will be presented to the Panel except in an edited form, and “results of this broader public input may not be fully analyzed.” Presumably the chair and facilitator, as part of their mandate, will remove any suggestion that the card program should be stopped or rolled back, as that is outside the range of options available to the Panel.

This does not show a great deal of confidence in the the public’s desire for the ID Card program, in the ability of British Columbians to provide rational and considered input to the Panel, nor in the Panel’s ability to make up their own minds about what their recommendations should be.

Specialists’ Forum

Again a key problem is the fact that the option of saying ‘no’ to the program is outside the mandate. Does this mean that experts who have expressed concern about the privacy and other problems with this initiative will be prevented from speaking, or will only be allowed to

bring up their concerns if they do not tend to steer the Panel toward rejection of the ID Card and ID management initiative?

We are also concerned about the “significant role” the Province is expected to play as “an information provider and source of expertise” for the Panel members. It is unclear from the White Paper whether this role will be undertaken primarily or exclusively in relation to specific elements of the Government’s digital and ID management plans, or if the Panel will be looking primarily to government officials for all information. This needs to be clarified.

We would be prepared to take part as key stakeholders, as long as our freedom to express our views on this subject is not restricted.

Timelines

The deadlines being established for this process raise a number of concerns.

First, the Panel will have relatively little time (two or three months) to get up to speed and become informed of the issues at stake before they (or perhaps more accurately, the Chair) will have to draft the report.

Second, as noted above, the Panel will in all likelihood be unable to receive even summaries of the input from the general public, which is a serious drawback in what is supposed to be a public consultation.

Conclusion

The key stumbling block to the credibility of this process is the fact that its mandate expressly prevents the Panel from recommending what would seem to be an obvious option – the ability to say no to this program.

This restriction will have negative effects on the credibility of the entire process, from the selection of members of the panel, to the chair and facilitator to the experts who will be providing advice to the panel. It may also result in a reduction in the submissions from members of the public who do not see the utility of the Government 2.0 process and are concerned about the likelihood of massive cost overruns and the risk of data breaches or other misuse of the data being collected, shared and mined.

As Minister, neither you nor the government are bound by the results of the consultation. If the Panel was to recommend a halt to further work and expenditure of public funds on these projects, you would still have the ability to reject that advice and carry on as planned, if you believed that to be the best option.

That fact that your government has already launched this project should not prevent a consultative process from having the option of telling you that this is a bad idea and you should change course – if that is what the participants conclude.

We look forward to seeing what improvements will be made to this process. Please feel free to contact me if you have any questions or concerns.

Sincerely Yours,

ORIGINAL SIGNED BY

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