



POLICIES AND PROCEDURES

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1. General

These Policies and Procedures address the most common procedures that the Office of the Information and Privacy Commissioner (“OIPC”) uses under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). For all complaints and requests for review, the OIPC’s overriding policy is to encourage the parties to resolve the issues by settlement. OIPC staff are authorized to attempt mediation of all matters before they are referred to a more formal process.

Unless they are defined below, words in this document have the meanings given to them in FIPPA. The following definitions apply in this document:

“access request” means a request for records made to a public body under FIPPA

“Adjudicator” means the Commissioner and any delegate of the Commissioner directed by the Commissioner to conduct an inquiry under Part 5 of FIPPA, to decide an application made under s. 42, 43 or 56 or to review the findings made by a Portfolio Officer in a complaint investigation under Part 4 of FIPPA

“applicant” means a person who has made an access request or, in the case of an application under section 42, 43, or 56 of FIPPA, the party making the application

“appropriate person” means a person to whom the OIPC gives notice under s. 54(b) of FIPPA and includes a third party or (in the case of a request for review by a third party) an applicant

“Commissioner” means the Information and Privacy Commissioner appointed under FIPPA and includes an Acting Information and Privacy Commissioner appointed and acting under FIPPA

“complainant” means an individual who has made a complaint under Part 4 of FIPPA

“complaint” means a complaint under FIPPA so designated by the OIPC

“day” does not include a Saturday or a holiday as defined in the *Interpretation Act*¹

¹ On the date of this document, “holiday” includes Sunday, Christmas Day, Good Friday, Easter Monday, Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, New Year’s Day and December 26. The *Interpretation Act* provisions in force on the relevant date will apply.

“exception” means an exception to the right of access to records set out in Part 2 of FIPPA

“hearing” means a hearing held under FIPPA

“*in camera*” means privately

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*

“inquiry” means an inquiry held under Part 5 of FIPPA

“Intake Officer” means an individual employed or retained by the OIPC as an Intake Officer

“Intervenor” means a person or organization with a broader interest in an issue being decided in an inquiry and whom the Commissioner has invited to participate in the inquiry

“Notice of Hearing” means a notice issued by the OIPC that a hearing will be held under FIPPA

“Notice of Inquiry” means a notice issued by the OIPC that an inquiry will be held under Part 5 of FIPPA

“OIPC” means the Office of the Information and Privacy Commissioner for British Columbia and, in relation to the exercise of powers, duties and functions of the Commissioner, includes the exercise of those powers by a delegate of the Commissioner

“Portfolio Officer” means an individual employed or retained by the OIPC as a Portfolio Officer

“public body” means a public body as defined in FIPPA

“respondent” means the party responding to an application made by another party under s. 42, 43 or 56 of FIPPA

“request” means a request for review under Part 5 of FIPPA

“third party” has the meaning given in FIPPA

2. Extending the Time Limit for Responding

Section 7 of FIPPA provides that, subject to ss. 23 and 24(1) (notice to a third party), a public body must respond to a request for records not later than 30 days after receiving a request unless:

- the time limit is extended under s. 10;
- the public body transfers the request to another public body under s. 11;
- the public body applies under s. 43 of FIPPA to the OIPC for authorization to disregard the request;
- the public body issues a fee estimate and none of the events set out in s. 7(4) has occurred;
- the applicant requests a review relating to a fee; or
- a third party requests a review.

Section 10(1) of FIPPA provides that the head of a public body may extend the time for responding to a request for up to 30 days or, with the “Commissioner’s” permission, for a longer period if one or more of the following apply:

10(1)(a): the applicant does not give enough detail to enable the public body to identify a requested record;

10(1)(b): a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body; or

10(1)(c): more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to the requested records.

In addition, with the permission of the OIPC, the head of a public body may extend the time for responding to a request as follows:

- if one or more of the circumstances described in ss. 10(1)(a) to (c) of FIPPA apply, for a period of longer than the 30 days permitted under that subsection
- if the OIPC otherwise considers that it is fair and reasonable to do so, as the OIPC considers appropriate

Intake Officers and Portfolio Officers have delegated authority to grant permission under s. 10 of FIPPA.

- 2.1 A public body may, on its own, extend the original 30-day time period for responding to a request for up to 30 additional days, if the reasons for taking the extension meet the criteria in s. 10(1) of FIPPA.
- 2.2 If a public body exercises its own discretion under s. 10(1) of FIPPA to take a time extension of up to 30 additional days and then determines, within that extended time, that it will need more than 60 days to respond to a request, it may request permission from the OIPC for a further extension.
- 2.3 A public body may request permission from the OIPC to extend the time for responding to a request if it determines, within the original 30-day time period for responding to the request, that one or more of the circumstances in ss. 10(1)(a) to (c) apply and it will need more than 60 days to respond to a request or that it would be fair and reasonable to extend the response time.
- 2.4 The OIPC will not consider a request under para. 2.2 or 2.3 after the original or, if applicable, extended time period has expired.
- 2.5 To request permission from the OIPC for an extension of time, a public body must complete the Application for Time Extension set out in Appendix 'A'.²
- 2.6 If the OIPC gives permission for an extension, the public body must promptly deliver to the applicant a written notice containing the following:
 - (a) the reason for the extension;
 - (b) when a response can be expected;
 - (c) a copy of the OIPC's permission letter; and
 - (d) provision for a staged release of records where practicable.

3. Complaint Investigations

Under Part 4 of FIPPA, the Commissioner is generally responsible for monitoring how FIPPA is administered and the Commissioner is also authorized to conduct investigations and audits to ensure compliance with any provision of FIPPA.

Part 4 provides that the OIPC may investigate and attempt to resolve complaints that:

² Also found at: [http://www.oipc.bc.ca/forms/Time_Ext_Application_Form_\(Dec2006\).pdf](http://www.oipc.bc.ca/forms/Time_Ext_Application_Form_(Dec2006).pdf)

- a duty imposed by FIPPA or the regulations has not been performed;
- an extension of time for responding to an access request is not in accordance with s. 10 of FIPPA;
- a fee required under FIPPA is inappropriate or that a public body has improperly denied a request for a fee waiver;
- a correction of personal information requested under FIPPA has been refused without justification; or
- personal information has been collected, used or disclosed by a public body in contravention of Part 3 of FIPPA.

The OIPC will treat a concern about whether a public body has conducted an adequate search for records as a complaint that a public body has failed to perform its duty under s. 6(1) of FIPPA and will investigate it as a complaint under Part 4 of FIPPA.

- 3.1 A complaint must be made to the OIPC in writing. The OIPC will accept complaints by email sent to the OIPC email address posted on the OIPC's website, www.oipc.bc.ca). A complaint may be made orally where a complainant has a limited ability to read and write or a physical disability which impairs the complainant's ability to make a written complaint. Where a person makes an oral complaint, the OIPC will put it in writing. After the complainant has reviewed it, he or she must acknowledge the document.
- 3.2 A complaint must provide enough information for the OIPC to understand and describe the issues involved and should be made within a reasonable time after the complainant became aware of the alleged incident giving rise to the complaint. A complainant must provide all of the following:
 - (a) the complainant's name, address and telephone number (and any facsimile number and email address);
 - (b) an explanation of the circumstances giving rise to the complaint; and
 - (c) where the OIPC has referred the complainant to the public body under para. 3.4, a copy of the public body's response to the complaint, if any.
- 3.3 The OIPC will not consider a complaint complete until all of the information described in para. 3.2, as applicable, has been provided to the OIPC and the OIPC will not act on the complaint until then. The OIPC may request that a complainant explain any undue delay in submitting the complaint to the OIPC.

- 3.4 Where a complainant has not given the public body an opportunity to respond to and attempt to resolve the complaint, the OIPC will normally refer the complainant to the public body before the OIPC takes further action. If the complainant believes the public body has not adequately dealt with the complaint, the OIPC will consider whether further action by the OIPC is warranted. Where the OIPC determines it would not be appropriate to refer the complainant to the public body, the OIPC will provide the public body with notice of the complaint and refer the file to a Portfolio Officer for investigation.
- 3.5 In conducting a complaint investigation, the Portfolio Officer exercises powers delegated by the Commissioner to investigate, make findings and dispose of the complaint.
- 3.6 Before disposition of the complaint, the Portfolio Officer will ensure that all parties have an opportunity to be heard.
- 3.7 If the public body or complainant disagrees with the Portfolio Officer's disposition of the complaint, either party may request that an Adjudicator review the Portfolio Officer's findings. The Adjudicator may do one or more of the following:
 - (a) Confirm all or part of the findings of the Portfolio Officer;
 - (b) Direct further investigation by a Portfolio Officer on all or part of the issues raised;
 - (c) Determine that no further action should be taken with respect to all or part of the complaint if the Adjudicator is of the view that further action would not serve the interest of a just determination of the issues raised in the complaint;
 - (d) Refer the matter to a hearing.

4. Authorizations to Disregard Access Requests

Section 43 of FIPPA provides that, if the head of a public body asks, an Adjudicator may authorize the public body to disregard access requests, or requests for correction of personal information, that

- would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or
- are frivolous or vexatious.

- 4.1 A public body seeking authorization to disregard an access request or request for correction must make a request in writing to the OIPC stating the reasons for the request.
- 4.2 The OIPC will send a copy of the public body's request to those affected.
- 4.3 A Portfolio Officer will attempt to mediate a settlement of the matter where the parties involved agree.
- 4.4 Where the matter is not settled during mediation, each party and those affected will be allowed to make written submissions in accordance with a schedule set by the OIPC at that time.
- 4.5 As provided in Part 6 of this document, a party may make part of its submission in private (also known as *in camera*) where it may reveal information which may be subject to an exception under FIPPA.

5. Requests for Review

A. Requesting A Review

- 5.1 A request for review must be made to the OIPC in writing. The OIPC will accept requests for review by email sent to the OIPC email address posted on the OIPC's website, www.oipc.bc.ca). A request may be made orally where an applicant has a limited ability to read and write or a physical disability which impairs the applicant's ability to make a written request. Where a person makes an oral request, the OIPC will put it in writing. After the applicant has reviewed it, he or she must acknowledge the document.
- 5.2 A request for review must provide enough information for the OIPC to understand and describe the issues involved. An applicant must provide all of the following:
 - (a) the applicant's name, address and telephone number (and any facsimile number and email address);
 - (b) a copy of the access request;
 - (c) a brief explanation of what the applicant wants reviewed; and
 - (d) a copy of the public body's decision.
- 5.3 The OIPC will not consider a request for review complete until all of the information described in para. 5.2 has been provided to the OIPC and the OIPC will not act on the request until then.

- 5.4 The applicant must deliver a request for review to the OIPC within 30 days after being notified of the public body's decision. The OIPC may allow a longer period of time where the public body consents or where circumstances prevented the applicant from delivering the request within the 30-day period.
- 5.5 Where an applicant has not given the public body an opportunity to respond to and attempt to resolve a request for review, the OIPC may, under s. 44(3.1) of FIPPA, require the applicant to attempt to resolve the request for review in the way directed by the OIPC before the OIPC begins or continues an inquiry under s. 56 of FIPPA.

B. Notice of Review

- 5.6 The OIPC will give a copy of the request for review to the head of the public body concerned and any other person that the OIPC considers appropriate.
- 5.7 Where the request for review involves a decision to refuse access and the matter cannot be fully considered without including any third parties, the OIPC may give a copy of the request for review to third parties under s. 54(b) of FIPPA.

C. Application of New Exceptions

- 5.8 If the public body decides to apply a new discretionary exception to disclosure of the records other than those specified in its response to the applicant, it must make that decision and communicate it in writing to the applicant and the OIPC no later than 20 days after the date the OIPC refers the file to a Portfolio Officer. The OIPC will treat any such decision by the public body as a supplement to the original response to the access request, not as a new response.
- 5.9 A public body will not be permitted to apply any new discretionary exception to records after the expiry of the 20-day period described above, unless the responsible Portfolio Officer permits it on written application by the public body. The Portfolio Officer may allow this where the public body has discovered a basis for application of the exception that could not reasonably have been discovered at the time of the public body's response to the access request or where the Portfolio Officer otherwise decides that extenuating circumstances warrant it. The Portfolio Officer will promptly notify the parties of his or her decision in writing.
- 5.10 If a public body decides to apply a new mandatory exception to disclosure of the records, other than those specified in its response to the applicant, it should wherever practicable make that decision and communicate it in

writing to the applicant and the OIPC within 20 days after the date the OIPC refers the file to a Portfolio Officer. The OIPC will treat any such decision as a supplement to the original response to the access request, not as a new response.

- 5.11 If a public body or other party seeks to raise a new exception after the OIPC issues a notice of inquiry to the parties, the OIPC will deal with it as a preliminary issue. The public body or other party will then be invited to make written submissions to the OIPC on why it should be entitled or permitted to argue the applicability of the new exception.

D. Mediation

- 5.12 The OIPC may, under s. 55 of FIPPA, refer each request for review to a Portfolio Officer for mediation. The intent of the mediation process is to facilitate a settlement of the issues and to ensure that the applicant has received access to all records or information to which the applicant is entitled under FIPPA.

5.13 The mediation process is separate from any subsequent inquiry.

5.14 The OIPC may extend the period for mediation if the parties consent or if it is fair and reasonable or otherwise necessary or appropriate in the circumstances to do so.

5.15 Where a request for review is not settled during mediation, it may be referred for an inquiry.

5.16 If the OIPC issues a Notice of Inquiry, mediation respecting the request for review may continue.

E. Decision Not to Hold An Inquiry under s. 56 of FIPPA

5.17 If a request for review does not settle, the OIPC has discretion to decide whether all or part of the matter will proceed to an inquiry under s. 56 of FIPPA. Considerations for the exercise of that discretion include whether:

- (a) the review has no reasonable prospect of succeeding, including because it is plain and obvious that requested records are subject to an exception to disclosure in FIPPA or fall outside the scope of FIPPA;
- (b) the review is frivolous, vexatious or otherwise an abuse of process;
- (c) the review is trivial or no meaningful remedy is required or available under FIPPA;

- (d) the substance of the review is more appropriately dealt with in another proceeding or process.
- 5.18 A party may also apply in writing to the OIPC to ask that all or part of a request for review not proceed to an inquiry.
- 5.19 Before the OIPC decides that all or part of a request for review will not proceed to an inquiry, the parties will be given an opportunity to be heard, in accordance with a schedule set by the OIPC at that time.

6. Inquiries

A. Time for Inquiry

- 6.1 An inquiry will be held within 90 days after receiving a request for review. The 90 days will be calculated from the time the OIPC has received a completed request for review as provided in Part 5 of this document. The 90-day time limit does not include the period for any referral to the public body under s. 44(3.1) of FIPPA (see para. 5.5 above).

B. Notice of Inquiry

- 6.2 If a matter proceeds to inquiry, the OIPC will issue a Notice of Inquiry to the parties within the 90-day timeline described in para. 6.1. If a party disagrees with the contents of the notice, that party must object in writing within the time limit set out in the inquiry instructions, copied concurrently to the other parties. All of the other parties will be given the opportunity to respond.
- 6.3 The OIPC may hold an inquiry outside the 90-day timeline if the parties consent or if it is fair and reasonable, or otherwise necessary or appropriate in the circumstances, to do so.
- 6.4 The OIPC may adjourn an inquiry or extend the timelines for submissions after it has issued a Notice of Inquiry if the parties consent, or if it is fair and reasonable or otherwise necessary or appropriate in the circumstances to do so.

C. Parties and Intervenors

- 6.5 The parties in an inquiry are the applicant, the public body and any third party or other appropriate person given notice under s. 54(b) of FIPPA.

- 6.6 The OIPC may invite a person to participate in the inquiry as an intervenor. The OIPC will do this by sending the proposed intervenor a copy of the request for review and the Notice of Inquiry. The OIPC may request comments from the parties before giving notice to an intervenor. An intervenor is not a party.
- 6.7 Parties and intervenors may appear on their own behalf or may be represented at the inquiry by an agent or a lawyer at their own expense.

D. Portfolio Officer's Fact Report

- 6.8 Before an inquiry, the responsible Portfolio Officer will prepare a fact report providing a chronology of the request, review and inquiry processes, setting out the facts and indicating any that are in dispute, describing the records and issues in dispute and any issues no longer in dispute, and specifying which provisions of FIPPA are in issue. The report will not include details relating to any attempts the parties made to settle the matter through mediation.
- 6.9 The Portfolio Officer's fact report will be distributed with the Notice of Inquiry. If any of the parties disagrees with the contents of the Portfolio Officer's report, that party must object in writing within the time limit set out in the inquiry instructions, copied concurrently to the other parties. All of the other parties will be given the opportunity to respond.
- 6.10 The Adjudicator will make all findings of fact and law in an inquiry. Where the Portfolio Officer's report contains an agreed statement of facts, the Adjudicator may accept those facts as proved by evidence.
- 6.11 An inquiry will be conducted in writing unless the adjudicator decides otherwise.

E. Submissions made *In Camera*

- 6.12 The OIPC may receive a submission *in camera*, in whole or in part, where the submission may disclose the contents of the record in dispute or where it contains information which may be subject to an exception under FIPPA. A party making a submission *in camera* must give written reasons to the OIPC as to why the submission should be received *in camera*.
- 6.13 If a party intends to submit material *in camera*, it must obtain the OIPC's approval ahead of time, in accordance with the time limit set out in the Notice of Inquiry, by providing the OIPC with a copy of its submission which clearly identifies all material proposed for submission *in camera*.

- 6.14 If material is received *in camera* without accompanying written reasons as to why it should be received *in camera*, the submitting party will be asked to provide written reasons and to resubmit the material if necessary.
- 6.15 An Adjudicator will review material submitted *in camera* and accompanying written reasons to determine whether the material is appropriately received *in camera*.
- 6.16 If the Adjudicator decides that a submission is not appropriately received *in camera*, in whole or in part, the submitting party will be given an opportunity to withdraw and resubmit the material.
- 6.17 If a party objects to the submission of material *in camera*, that party will be given an opportunity to make submissions.
- 6.18 If the Adjudicator is satisfied that the material is all properly received *in camera*, this will be communicated in writing to the parties.
- 6.19 As necessary, the registrar will provide further instructions to the party about the appropriate number and form of copies of the submission that the party must provide to the other participants in the inquiry and to the OIPC.

F. Mediation Material not Permitted in Submissions

- 6.20 A party must not include any mediation material in a submission, unless that party has obtained the written consent of the other parties to do so. If written consent is not obtained, the OIPC will remove any mediation material from the submission.
- 6.21 Mediation material includes
- records, information or communications the OIPC generated during the mediation process, including the Portfolio Officer's views and opinions on the merits of the case and any recommendations the Portfolio Officer made to the parties on ways of settling the issues in dispute;
 - records or information provided by any party related to the mediation process;
 - information or records relating to attempts to settle the issues before the inquiry began.
- 6.23 Mediation material does not include information related to the factual outcomes of mediation, such as
- changes in the issues or the exceptions applied;

- changes to the scope of the records in dispute;
- changes to or waivers of fees assessed by the public body.

G. Form of Evidence

- 6.24 Parties should provide factual information in the form of affidavit evidence whenever possible. Affidavits should generally contain direct evidence only and should not include facts sworn on information and belief.
- 6.25 Unsworn evidence and sworn evidence provided on information and belief is admissible, but will be weighed accordingly by the Adjudicator where that evidence relates to facts in dispute.

H. Exchange of Submissions and Reply

- 6.26 All written inquiries will normally be conducted on a 26 business day schedule, as follows:
- **Day 1** Notice of Inquiry and Fact Report are issued to all participants,
 - **Day 16** Initial submissions are filed and exchanged by all participants,
 - **Day 24** Reply submissions are filed and exchanged by all participants wishing to do so,
 - **Day 26** Close of Inquiry. Participants may not file any further submissions or any objections on procedural or other issues after this day without the OIPC's permission. The participant must explain in writing the reason for requesting permission to make a further submission or objection and the Adjudicator will decide whether or not to accept it.
- 6.27 All submissions must be exchanged among the participants and concurrently sent to the attention of the Registrar of Inquiries and received by the OIPC on the dates specified.
- 6.28 The OIPC will accept written submissions prepared in accordance with the standards set out in the inquiry instructions.
- 6.29 Each participant may reply to the initial submissions made by the others. If a participant does not make an initial submission, that participant cannot make a reply submission except in extenuating circumstances.

- The participant must explain the extenuating circumstances in writing and the Adjudicator will decide whether or not to accept the submission.
- 6.30 A reply submission must not include new facts or raise new issues.
- I. Oral Inquiries**
- 6.31 In deciding whether to hold an oral inquiry, the Adjudicator will consider whether:
- (a) material facts are in dispute;
 - (b) credibility is an issue;
 - (c) the issues are complex;
 - (d) the review raises significant policy issues;
 - (e) the person who requested the review has a limited ability to read and write or a physical disability which impairs the person's ability to make a written submission.
- 6.32 All parties and intervenors have a right to be present during submissions made by other parties unless a submission or part of it is *in camera*. The rules in this Part respecting *in camera* written submissions apply with the necessary changes to *in camera* submissions during an oral inquiry.
- 6.33 An oral inquiry will normally be open to the public except where
- (a) submissions are made *in camera*; or
 - (b) the subject matter of the review involves sensitive personal information relating to the applicant or a third party, that person requests the Adjudicator to conduct the inquiry *in camera*, either in whole or in part, and the Adjudicator is of the view that public disclosure would be an unreasonable invasion of personal privacy.
- 6.34 Oral inquiries are recorded. On request by a party, the OIPC will provide a copy of the recording or will arrange for transcripts to be made. The party requesting it must pay the actual cost of the recording or transcription.
- 6.35 Where all or part of an oral inquiry has been held *in camera*, the OIPC may request submissions from the parties as to whether any recording or transcript may be released to the parties. The Adjudicator may release all or part of a recording or transcript where he or she later determines that an *in camera* inquiry was not appropriate having considered the submissions of the parties and all of the circumstances.

- 6.36 Parties may appear on their own behalf or may be represented at the inquiry by an agent or a lawyer at their own expense.
- 6.37 Evidence will be taken under oath or affirmation.
- 6.38 Where the Adjudicator is of the view that both written and oral representations are necessary to assist in deciding a matter, he or she may require each party to file a written submission before or after an oral inquiry.
- 6.39 Intervenors may file written submissions in advance or may make oral submissions at the inquiry. Where written submissions are received from intervenors, copies will be distributed to the parties.
- 6.40 Each participant may make initial submissions and may make a reply to other initial submissions. The order of presentation will normally be as follows:
- (a) applicant
 - (b) public body;
 - (c) third parties and any other appropriate persons
 - (d) intervenors

J. Procedural Objections

- 6.41 If a procedural objection is raised, the Adjudicator may suspend the inquiry pending a decision on the objection by the Adjudicator.

K. Return of records

- 6.42 Any records or information in dispute that the public body submitted to the OIPC during the inquiry will be returned no later than 60 days following the date of the Adjudicator's order, except where there has been an application for judicial review.

7. <u>Deemed Refusal Reviews</u>

FIPPA sets out the time within which a public body must respond to a request for access to records. The usual time for response is 30 days after receiving a request described in section 5(1), but extensions of the response time are possible under section 10 in appropriate circumstances.

Section 53(3) of FIPPA says that the failure of the head of a public body to respond in time is to be treated as a decision to refuse access to the record, known as a deemed refusal. This policy sets out the process the OIPC follows for deemed refusals.

Stage 1: Intake Officer Evaluates the Review

1. Upon receipt of the request for review, an Intake Officer reviews the documents supplied to ensure that the applicant has:
 - (a) provided a copy of the original request for records;
 - (b) provided a copy of the public body's letter acknowledging the access request, if any;
 - (c) only requested a review on the issue of deemed refusal. (For example, if the applicant has indicated concerns regarding fee estimates, fee waivers or states that he or she has received a partial response, the matter will not be treated as a deemed refusal and will be moved into the regular stream for managing requests for review.); and
 - (d) if more information is required from the applicant, contact the applicant to confirm that the review relates solely to a deemed refusal.
2. Based on the information from the applicant, the Intake Officer will complete a preliminary calculation of the response time taking into account time extensions and time excluded due to fee-related issues.
3. If satisfied that the sole issue relates to the public body's failure to respond in time, the OIPC review file will be opened and, within 4 days after file opening, the Intake Officer will contact the public body to:
 - (a) confirm that the public body received the request and opened a file;
 - (b) confirm time lines and due dates;
 - (c) confirm whether or not time extensions were taken;
 - (d) confirm that there are no outstanding fee issues;
 - (e) record the public body's explanation for the delay;
 - (f) identify other appropriate persons e.g., if the delay is due to consultations;
 - (g) obtain the public body's estimated time for release;
 - (h) determine if the public body is willing to consider a consent order;

- (i) tell the public body that the OIPC will not refer a request for review about a deemed refusal for mediation under section 55.
4. The Intake Officer will contact the applicant to determine if the applicant is willing to consider a consent order if the public body has indicated a proposed date for release.
5. If both parties have indicated a willingness to seek a consent order, the matter proceeds to stage 2 but if not it proceeds to stage 3.

Stage 2: Consent Orders

1. If both parties have indicated a willingness to seek a consent order, the Intake Officer will assign the file to a Portfolio Officer.
2. The Portfolio Officer's task is to draft a consent order within 4 days of receiving the file from the Intake Officer. If no agreement is reached within 4 days, the matter will be moved to stage 3.
3. The public body and the applicant must sign the consent order. Once signed by the parties, the consent order is forwarded to an Adjudicator for review and approval if appropriate.

Stage 3: Expedited Inquiry Process

1. If either party is unwilling to seek a consent order, the OIPC will prepare and send out a Notice of Inquiry and fact report. Each party and those affected will be allowed to make written submissions in accordance with a schedule set out in the notice and the accompanying instructions. The key information required from the public body is the date on which it can respond to the request.
2. The Adjudicator will make a decision and tell the parties.

8. Solicitor Client Privilege Reviews

The Commissioner has implemented a separate solicitor client privilege case review process for information withheld under s. 14 of FIPPA ("SCP Stream") and a standard review process for other exceptions to disclosure ("Standard Stream").

The objectives of the SCP Stream are:

- to ensure respect for the unique importance of solicitor client privilege within the legal system and the exception to disclosure in FIPPA;

- to fulfill the Commissioner's mandate to investigate, inquire into and make orders concerning whether the exception to disclosure in s. 14 of FIPPA is properly claimed; and
- to maintain an appropriate allocation of oversight resources between s. 14 of FIPPA and the other exceptions to the rights of access to information.

A. Requests for Review

- 8.1 When the Commissioner's Office opens a request for review of a public body's decision to withhold information, an Early Intervention Officer establishes whether the case includes a denial of access to information under s. 14 of FIPPA.
- 8.2 The Early Intervention Officer discusses with the applicant whether he or she wishes to pursue or withdraw the part of the request for review that concerns information to which access has been refused on the ground that it is protected by solicitor client privilege.
- 8.3 The Early Intervention Officer explains to the parties that SCP cases are not assigned for mediation by the Commissioner's office under FIPPA. However, if the parties mutually request it, a Portfolio Officer who may also be responsible for investigating and mediating Standard Stream parts of the request for review will undertake consensual mediation of the SCP case.
- 8.4 If consensual mediation of the SCP case is not requested or does not succeed, it moves directly into the SCP Stream.

B. Investigation and Inquiry

- 8.5 The investigation and adjudication of SCP cases happens only in the SCP Stream, where a legally-trained Adjudicator is delegated authority from the Commissioner to:
- (a) investigate under s. 42 of FIPPA;
 - (b) require persons to provide evidence or to produce records or documents under s. 44 of FIPPA;
 - (c) conduct inquiries under s. 56 of FIPPA;
 - (d) make orders under s. 58 of FIPPA.

- 8.6 An Adjudicator assigned to a SCP Stream case:
- (a) examines:
 - (i) the applicant's request for access to information;
 - (ii) the public body's response asserting solicitor client privilege; and
 - (iii) the applicant's complaint or request for review regarding the claim of privilege;
 - (b) obtains clarification, if not already apparent, from the public body of the type of solicitor client privilege claimed (legal professional privilege, litigation privilege or both);
 - (c) as necessary in the circumstances of the case, requests the public body or organization to provide factual evidence to establish the existence of the privilege, including an adequate description of the record or document for that purpose;
 - (d) examines the information, record or document in issue if the public body has elected to include it in the factual evidence to establish the existence of the privilege;
 - (e) gives the applicant an opportunity to provide evidence rebutting the assertion of privilege and gives the public body an opportunity to reply;
 - (f) makes any further necessary factual inquiries of the public body;
 - (g) requests to examine the information, record or document over which solicitor client privilege is claimed only where necessary to fairly adjudicate the existence of the privilege;
 - (h) issues a decision determining whether or not the public body or organization is authorized to apply s. 14 of FIPPA;
 - (i) takes all reasonable precautions throughout, including receiving evidence in private, to protect solicitor client privilege and avoid disclosing to any person any information, record or document that is subject to solicitor client privilege or a claim of solicitor client privilege;
 - (j) extends procedural fairness to the applicant and public body, subject to the foremost necessity of protecting and avoiding disclosure of any information, record or document that is subject to solicitor client privilege or a claim of solicitor client privilege.

Appendix 'A'



Time Extension Application Form

Application under the Freedom of Information and Protection of Privacy Act (FIPPA)

Note: Public bodies must submit this form at least **3 business days** before the time limit for responding to the request as set out in sections 7 and 10 of FIPPA has expired. Time extension decisions will be made based on the information supplied on this form; therefore, public bodies should ensure that the information supplied on the form is complete and accurate.

Public Body

Public body requesting time extension: _____

Public body File #: _____

Contact Name: _____

Contact Direct Line: _____

Contact Email Address: _____

Public Body Mailing Address: _____

Request Details

Provide a brief description of the original request

Relevant Information

Date request received	_____
Original due date of request	_____
Fees Requested?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Request placed on hold for non-fee related reasons?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Time extension taken by public body?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Current due date of request	_____
Number of days requested for this extension	_____
Proposed new due date	_____

Fee related questions:	
Date fee estimate sent	_____
Date deposit or full fee paid	_____
Date fee waiver requested	_____
Date of fee waiver decision	_____

<p>“On hold” question: If the request was placed on hold for a non-fee related reason provide details including dates and copies of any letters notifying the applicant of the on-hold status.</p>
--

Public body time extension	
Basis for time extension already taken by public body?	<input type="checkbox"/> s. 10(1)(a) <input type="checkbox"/> s. 10(1)(b) <input type="checkbox"/> s. 10(1)(c)
Date of time extension taken by public body	_____
Date of letter notifying applicant of time extension	_____
Has Applicant complained to OIPC about this time extension?	<input type="checkbox"/> Yes <input type="checkbox"/> No

First Time Extension Request to OIPC? Yes No

Second/Further Time Extension Request

OIPC File # for previous extension granted: F _____

Length of first OIPC extension _____

Name of FOI applicant: _____

Telephone number of applicant: _____

Email address of applicant: _____

Grounds for Extension Application

(You may choose more than one ground for the time extension application.)

- Section 10(2)(a) Insufficient detail (10(1)(a))
 - Volume of records requested or to be searched (10(1)(b))
 - Consultation (10(1)(c))

- Section 10(2)(b)

Reasons for Requesting Time Extension

10(1)(a) Insufficient Detail

Note: If you have selected this ground you must forward a complete copy of the original request to the OIPC along with your time extension application.

- Access Request attached as PDF
- Access Request sent by Fax

Explain why the request as written does not provide sufficient detail.

Explain why the public body could not obtain a satisfactory clarification from the applicant within 60 days (or 30 days if the public body has not taken its own time extension).

Further ground for extension request?

- Yes
- No

Reasons for Requesting Time Extension

□ 10(1)(b) Volume of Records

(a) Large Volume of Records Requested

Approximate number of pages of responsive records:

(b) Large Volume of Records to be Searched

Describe search required:

Approximate total number of pages of records to be searched:

Approximate time required to search electronic records:

Total number of program areas that must be searched:

Other potential sources of records:

Approximate time required to perform the search:

Describe search performed to date:

Number of pages of records already searched:

Number of program areas already searched:

Amount of time spent thus far searching electronic records:

Total amount of time spent thus far performing search:

(c) Unreasonable interference with the operations of the public body

Explain how meeting the time limit would unreasonably interfere with the operations of the public body:

(d) Current Status

What is the current status of the processing of this request?

Other relevant information:

Further ground for extension request?

- Yes
- No

10(1)(c) Time for Consultation Required

For **each** public body or third party consulted, provide the following information:

1. Name of the public body or third party.
2. Date consultation sent or to be sent.
3. Date of last contact with third party or other public body.
4. Describe any efforts made to obtain a response to the consultation.
5. Current status of the consultation, including expected return date.
6. Number of pages sent or to be sent for consultations.
7. Other relevant information

Further ground for extension request?

- Yes
- No

Reasons for Requesting Time Extension

10(2)(b) Application

Explain why it would be fair and reasonable for the Commissioner or his delegate to grant an extension of time. Include a chronology of the processing of the request and an explanation for any delays.

Further ground for extension request?

- Yes
- No

Additional Comments: (use this area to provide further details that will assist in the decision on the time extension request)