GENERAL

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Time extension guidelines for public bodies



OFFICE OF THE INFORMATION & PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

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INTERIM FRAMEWORK

This interim time extension framework aims to provide applicants with more realistic timelines, and hold public bodies accountable when processing large volume requests. As records have increasingly transitioned from physical to digital, the associated volume of pages and records that must be processed in response to requests has grown.

The interim framework recognizes the additional time and resources that large volume requests may take to process, and includes clear timelines based on the number of pages in response to an access request. See section Application of time extensions under s. 10(2) for more details.

Public bodies that apply for time extensions under this framework will be required to provide applicants with regular process updates and a phased release of records when possible.

TIME EXTENSION APPLICATIONS

The Office of the Information and Privacy Commissioner for BC (OIPC) receives over 2,500 applications per year from public bodies to extend the time limit for responding to requests for access to records (commonly referred to as Freedom of Information (FOI) requests).

The OIPC makes decisions based on the information provided when a public body requests a time extension; therefore, it is critical that all necessary information is provided for the Case Review Officer to make an informed decision. Applications for time extensions that are missing information or that include incorrect information are more likely to be declined.

This document provides guidance for public bodies on the time extension process, and provides applicants with information about how and why the time limits of their FOI requests might be extended.

LEGISLATION

Extending the time limit for responding

The *Freedom of Information and Protection of Privacy Act* (FIPPA) requires a public body to make every reasonable effort to respond to an FOI request no later than the statutory 30-day time limit.[1] If the public body cannot meet the deadline, it may take a 30-day extension if:

[1] FIPPA s.6(1) & s.7(1). Note that a "day" constitutes a business day and does not include Saturdays or holidays (which include Sundays). Schedule 1, FIPPA, Interpretation Act, [RSBC 1996] c. 238 at ss. 25 and 29. Section 25.2 details that one is to count forward from and including the day after the reference day.

- the request involves a large number of records such that meeting the time limit would unreasonably interfere with public body operations, and/or
- more time is required to consult with a third party.[2]

A public body may extend the time limit for responding to an FOI request if the applicant has consented to the time extension.[3] If the time for responding to a request is extended under this section, the head of the public body must tell the applicant:

- the reason for the extension,
- when a response can be expected, and
- in the case of an extension under s. 10(1)(a) to (c), that the applicant may complain about the extension under ss. 42(2)(b) or 60(1)(a).[4]

A NOTE ABOUT STATUTORY TIME LIMITS

Sections 5 and 7 of FIPPA are crucial to understanding and applying the statutory time limits for responding to FOI requests. If an FOI request fulfills the requirements under s. 5, the public body has 30 days to respond to the FOI request. Those requirements are:

- The applicant submits a written or oral[5] request to the public body they believe to have custody and control of the records;
- The written request contains sufficient detail to enable an experienced employee to identify the requested records with reasonable time and effort; and
- If the applicant is acting on behalf of another person in accordance with the regulations, they provide written proof of their authority to make the request.

An applicant may complain to and ask for the OIPC to review any part of the application of ss. 5 and 7 by the head of a public body, including whether a request under s. 5 has been received and whether the head has discharged their duty to assist applicants under s. 6.

After meeting the requirements established by s. 5, public bodies may only suspend a statutory time limit if authorized to do so by one of the provisions under s. 7. A public body's decision to put a request "on hold" does not suspend the statutory time limit if there is no authority to do

[2] FIPPA s.10(1).
[3] FIPPA s.10(1.1).
[4] FIPPA s.10(3).
[5] Pursuant to s. 2 of the *FIPPA Regulation* B.C. Reg. 155/2012, only when an applicant's ability to read or write English is limited or when an applicant has a physical disability that impairs the applicant's ability to make a written request.

so under s. 7. Section 7 both authorizes the suspension of the statutory time limit and indicates when the time limit to respond commences.[6]

If the statutory time limit has passed without the public body responding to the FOI request, s. 53(3) of FIPPA states that a public body has made "a decision to refuse access", i.e. the public body's lack of an active decision is deemed to be the same as if it had made an active administrative decision. Consequently, the time limit for responding to a request cannot be extended because a public body is not authorized by s. 10(1) or (1.1) to extend its time to make a decision. This is because, in the eyes of FIPPA, the public body has already made the "decision." An applicant can complain to OIPC in these circumstances. Similarly, if the time limit for responding has passed, the OIPC cannot grant a time extension under s. 10(2).[7]

MANAGING THE SCOPE AND VOLUME OF REQUESTS

The OIPC expects public bodies to try to work with FOI applicants to narrow the scope of a request if it results in the applicant receiving the relevant records faster. Narrowing a request to focus on the records or information that meets the applicant's true interest is an important element of the duty to assist.

Overly broad requests may result in a large volume of responsive records and longer processing times. Refining a request – for example by focusing on a particular time period, type of record, or subject matter – may help an applicant receive records faster because the public body can process the request more efficiently. In addition, a narrower request may reduce the need for a time extension, while still allowing applicants to receive the information that is most important to them.

Note that public bodies can also request the commissioner's permission to disregard access requests that are excessively broad under s. 43 of FIPPA.[8]

APPLICATION OF TIME EXTENSIONS UNDER S. 10(1)

Public bodies may take a time extension without OIPC approval if they have grounds under s. 10(1) for a maximum of 30 days. If the time for responding to the FOI request is extended under s. 10, then s. 10(3) requires the public body to tell the applicant the reason for the

[6] Note that a postponement of time under s. 7(6) only affects those records that are the subject of the third-party review. See OIPC Order F08-07 and *British Columbia (Labour and Citizens' Services) v. British Columbia (Information and Privacy Commissioner)* [2009 BCSC 1700].
[7] See OIPC Order F13-26 [CanLII Cite: 2013 BCIPC No. 34].
[8] For example, see OIPC Order F26-50.

extension, when a response can be expected, and in certain cases that the applicant can complain to the OIPC about the extension.[9]

If a public body expects it will require more than the 30 days permitted under s. 10(1) to respond to an access request, the OIPC encourages the public body to apply directly to the OIPC for a time extension under s. 10(2). Seeking the extension in advance allows the public body to provide the applicant with a single, clear timeline for responding to the request. In such circumstances, when calculating the appropriate time extension to approve, the OIPC will take into consideration that the public body has not taken a time extension on its own.

For more information about time extensions under s. 10(2), please see "Application of time extensions under s. 10(2)."

A. If section 10(1)(a) applies

This provision applies when an applicant does not give enough detail to enable the public body to identify a requested record.

Test: When applying for a time extension, the public body must explain why more detail is required to identify a record.

Other Relevant Information:

- Dates of request and follow up with applicant, including efforts made by the public body to contact the applicant and clarify the request.
- If the public body has already obtained further details, what is the expected response date?

B. If section 10(1)(b) applies

A public body can apply this provision when a large number of records have been requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body.

Test: The public body must demonstrate that:

1) a large number of records have been requested or must be searched, and
2) that meeting the time limit would unreasonably interfere with the operations of the public body.[10]

[9] FIPPA S.10(3)(c) states that in the case of an extension under 10(1)(a) to (c), that the applicant may complain about the extension under section 42(2)(b) or 60(1)(a).

[10] For guidance on what constitutes **unreasonable interference with a public body's operations**, see OIPC Order F22-08 [2022 BCIPC 08 CanLII] at para. 59, and *Crocker v British Columbia (Information and Privacy*

Volume:

- How many pages?
- Do the records require special handling?
- Does the type of record require different methods of searching or handling?
- How does volume compare with average request volume?

Circumstances that may indicate unreasonable interference:

- Significant increase in information FOI requests (e.g., sharp rise over 1-4 months), over the historical norm for that public body.
- Significant increase in FOI analysts' caseloads (sharp rise in average caseload), over the historical norm for that public body.
- Unplanned or unexpected FOI analyst leave (e.g., analyst on file)
- Unusual percentage (exact numbers) of new FOI analysts-in-training
- Computer systems or technical problems
- Cross government requests
- Program area discovers a significant amount of additional records
- Type of records (maps, etc.)
- Number of program areas searched
- Location of records

Invalid Circumstances ***(****The OIPC will not approve a time extension request under s. 10(1)(b) for the following reasons)*:

- The operation has not been allocated sufficient resources
- Chronically high caseloads and turn-over of analysts
- Office processes (e.g., sign-off)
- Pre-planned events (e.g., vacations, retirements, other personal commitments)
- Previous s. 10(1) extension taken and no work done on file
- Type of applicant (media, political, etc.)

Commissioner) 1997 CanLII 4406 at para. 37: "*The determination of what constitutes an unreasonable interference in the operation of a public body rests on an objective assessment of the facts. What constitutes an unreasonable interference will vary depending on the size and nature of the operation. A public body should not be able to defeat the public access objectives of the Act by providing insufficient resources to its freedom of information officers*."

Other Relevant Information:

- Public body made attempts to correct a mistake in processing the request
- Public body communicated with the applicant
- Public body made a phased release
- Public body provided reasonable release dates
- Public body waived fees

C. If section 10(1)(c) applies

A public body can apply s. 10(1)(c) when more time is needed to consult with a third party or other public body before the head can decide whether to give the applicant access to a requested record.[11] The implication is that consultation is done for the purpose of deciding whether to give access.

Test: The public body needs to explain why it is necessary to consult with a third party or other public body to make a decision about access, including how the third party or other public body is expected to assist. Also, the public body needs to explain why it needs more time to do this.

Some valid reasons for consulting:

- Third party or other public body has an interest in the records
- Records are created or controlled jointly

Other Relevant Information:

- When did public body initiate consultation?
- Large number of consultations required
- Availability of third party or public body contacts
- Did public body set deadline expectations for the third party or other public body?
- Is the time required for consultation reasonable?
- Has the public body followed up on consultation request?
- Has the public body proceeded with a phased release?

[11] Includes separate public bodies and, in the case of government, separate ministries. See for example OIPC Order F19-46 [CanLII Cite: 2019 BCIPC 52; Quicklaw Cite: [2019] B.C.I.P.C.D. No. 52]: Ministry of Transportation and Infrastructure, December 16, 2019. https://www.oipc.bc.ca/orders/2372. Does not include consultation with programs or branches within same public body or ministry.

Invalid Circumstances:

- Consultations with staff in same public body, e.g., legal counsel or program area
- Consultations for a purpose other than deciding whether to give access
- Previous s. 10(1) extension taken and no work done on file

Note: Consultation under s. 10(1)(c) is distinct from the obligation of a public body to notify third parties under ss. 23 and 24 of FIPPA.

D. If section 10(1.1) applies

The head of a public body can apply s. 10(1.1) when an applicant consents to the extension in the prescribed manner, as described by s. 10 of the FIPPA Regulations.

Test: Section 10 of the FIPPA Regulations requires the consent to be:

1) in writing, and

2) in a manner that includes the period of time of the extension that is being consented to.

This can take the form of a document that the applicant signs or an email that the applicant responds to. In either case the public body must clearly state either the number of business days the time limit is being extended or the new date the access request is due (the OIPC recommends the latter as this eliminates mistakes in counting days). The applicant's response must clearly indicate consent or agreement.

The current legislation gives public bodies significantly more flexibility to conclude consensual agreements with applicants than the previous 30-business-day limit. Where an applicant agrees, the parties can establish a reasonable timeframe that reflects the work required to process the request.

A well-managed consent-based extension can provide certainty for the public body, clarity for the applicant, and greater administrative efficiency for everyone involved.

Other relevant information:

- The OIPC expects consent to be direct and clear. The optimal consent, for example, would be, "I consent to extending the time limit by 30 days" or "I consent to the new due date of e.g. September 15". Alternatively, it is acceptable if the applicant provides responses such as "I consent" or "I confirm" or "I agree" to the analyst's question: "Please confirm that you consent to a further 30-day extension of the time limit."
- If the applicant clearly consents but imposes conditions on the public body, the OIPC considers this valid consent. However, it is the public body's responsibility to address the conditions.

Invalid circumstance:

- The public body had already run out of time when the consent was requested.

APPLICATION OF TIME EXTENSIONS UNDER S. 10(2)

A. Application of s. 10(2)(a)

Unlike ss. 10(1) or 10(1.1), time extensions pursuant to s. 10(2) require the public body to seek permission from the commissioner. While s. 10(1) allows for a time extension of up to 30 additional business days, s. 10(2)(a) allows for as many additional days as the commissioner considers appropriate.

Section 10(2)(a) says the commissioner may grant a time extension under s. 10(2)(a) if one or more of the circumstances outlined in subsections (1)(a) to (c) apply.

B. Application of s. 10(2)(b)

With the commissioner's permission, under s. 10(2)(b), a public body may extend the time for responding to a FOI request if the commissioner otherwise considers that it is fair and reasonable to do so.

If a public body expects that it will require more than the 30 days permitted under s. 10(1) to respond to an access request, it may apply directly to the OIPC for a time extension under s. 10(2). Seeking the extension in advance allows the public body to provide the applicant with a single, clear timeline for responding to the request.

This process aims to reduce the administrative burden of requesting multiple extensions from the OIPC. This process applies to all public bodies that require additional time beyond s. 10(1) for access requests with an exceptionally large volume of responsive records.

Circumstances that have been considered fair and reasonable include requests that result in large volumes of responsive records, and other extenuating circumstances that are generally outside of the public body's control.

Large volume requests

To achieve administrative efficiencies that will lead to applicants receiving records faster, exceptionally large volume requests may be allotted larger time extensions to respond with conditions:

- The public body will continue progress on the file;
- The public body will identify the total number of days projected to review the records and the number of days for the current time extension;

- The public body will send a progress update to the applicant after the first 125 business days of the extension (6 months),
    - the number of pages collected for review;
    - the number of pages reviewed;
    - as appropriate,
        - details on consultations,
        - details of a phased release plan, and
- The public body advises the applicant that they may complain to the OIPC if they do not receive a required progress update.

Where the circumstances of the request are such that a time extension of over 250 business days may be warranted (please see the Table 1 below), the OIPC will generally grant a maximum time extension of **one year (250 business days)** at a time.

All time extension requests are discretionary decisions made by a delegate of the Commissioner, which includes the discretion to grant time extensions above or below the times indicated in the interim framework. Factors other than just large page volume (such as multiple records formats, required consultations, and the sensitivity of personal information) may still be taken into account as appropriate.

If the public body requires additional time beyond the one-year extension, it must return to the OIPC at the end of that period to request a further time extension. The request must include a **progress update** outlining the work completed to date, the work remaining, and the reasons additional time is required.

A public body must meet the conditions to be eligible for any subsequent time extensions to be granted. A further time extension will not be granted where the public body has not made sufficient progress in processing the request during the preceding extension period. Public bodies are expected to make reasonable and sustained progress throughout the extension period.

If the applicant complains and the OIPC finds that the conditions are unmet, the time extension is void and the file will be considered to be in deemed refusal.

Table 1: Time extension guidelines based on estimated number of pages

Estimated page volume	Cumulative number of business days
Any number of pages	30 days – Initial FIPPA s. 7(1) time limit
less than 500	60 days – FIPPA s. 10(1) Public Body extension*
FIPPA s. 10(2) OIPC Time Extension	
500-1000	0-60
1000-1500	60-120
1500-2000	120-180**
2000-2500	180-240**
2500+	Case-by-case, based on estimated processing times)***

* If a s. 10(1) extension has not been taken by a PB and they are eligible for it, then up to 30 days may be added to the days granted in this table.
** first update to applicant at 125 days (about 6 months)
*** Updates due to applicant at 125 and 250 days. The OIPC will grant extensions up to 250 days; if additional time is required, the public body must request a subsequent time extension and the updates to applicants will be required every 125 days.

All other requests
With the commissioner's permission, under s. 10(2)(b), a public body may extend the time for responding to a FOI request if the commissioner otherwise considers that it is fair and reasonable to do so.

Test: Generally, time extension requests under s. 10(2)(b) must be for the purpose of alleviating short-term, time-limited, unexpected delays that are not covered by ss. 10(1)(a) to (c). The public body must show that meeting the deadline would unreasonably interfere with their operations

Factors to consider:

- Will the applicant be prejudiced (assume so if the public body has not contacted the applicant)?
- Are the circumstances causing the delay short-term or chronic?
- Is the cause of the delay planned or foreseeable?
- How long is the delay?
- When is the estimated response date?

Some valid circumstances:

- Forest fires
- Labour unrest
- Court involvement
- File specific staffing issues
- Unforeseeable moving mishaps

D. Aggregate Time Extension Applications

To promote administrative efficiency and consistency the OIPC accepts aggregate time extension applications. It is appropriate for the OIPC to process time extension applications in aggregate form where multiple FOI requests are affected by the same or similar factors.

Public bodies must still provide all required information for each FOI request:

- the date the public body received the FOI request;
- current legislative due date;
- nature of the circumstances giving rise to the extension application;
- whether this is a first or subsequent extension application;
- and the length of time reasonably required.

Public bodies are encouraged to contact the OIPC in advance to confirm whether an aggregate time extension application is appropriate and what information is required to support it.

APPLICATION OF S. 10(3)

Section 10(3) requires public bodies that receive an extension under s. 10 to communicate the following to the applicant:

(a) the reason for the extension,

(b) when a response can be expected, and

(c) in the case of an extension under subsection 10(1)(a) to (c), that the applicant may complain about the extension under ss. 42(2)(b) or 60(1)(a).

When the public body takes a time extension under s. 10(1) or is granted a time extension under s. 10(2) of FIPPA, it must comply with s. 10(3) of FIPPA and notify the applicant of the time extension, provide reasons for the extension, and tell the applicant when a response can be expected.

FIPPA requires the public body to respond to an applicant as soon as possible with the responsive records. The OIPC also encourages public bodies to release records in phases to the FOI applicant as its review progresses, and to design internal review processes with this in mind. This is particularly important for large volume records that may receive long time extensions. The public body should not delay releasing records merely to permit a "bulk release" unless it is necessary for a global consideration of the disclosure package.

COMPLAINTS REGARDING TIME EXTENSIONS UNDER SS. 10(1) AND 10(1.1)

FOI applicants may complain to the OIPC about time extensions taken by public bodies pursuant to ss. 10(1) or 10(1.1) of FIPPA. For more information about our complaint process, please see our website: https://www.oipc.bc.ca/for-the-public/how-do-i-make-a-complaint/

The OIPC will review a public body extension taken under ss. 10(1) and 10(1.1) if it receives a complaint from the applicant about the time extension. For complaints submitted to the OIPC about a time extension taken under s. 10(1), the public body is required to provide the OIPC with details about the extension to show there were sufficient grounds for the extension. For complaints submitted to the OIPC about a time extension taken under s. 10(1.1), the public body is required to provide the OIPC with details about the extension to verify that valid consent was received.

Where this OIPC grants a time extension of more than six months, the public body must provide the applicant with an update on the status of the request after the first six months.

If the applicant does not receive the required update, they must first contact the public body to request an update before submitting a complaint to this Office. This gives the public body an opportunity to address the omission and provide the applicant with information about the status of the request.

RECONSIDERATION OF S. 10(2) TIME EXTENSION DECISIONS

The OIPC does not consult with FOI applicants before deciding a public body's time extension application under s. 10(2). In addition, decisions under s. 10(2) are final, and there is no avenue for FOI applicants or public bodies to request a reconsideration of the OIPC's time extension decision.

These guidelines are for information purposes only and do not constitute a decision or finding by the Office of the Information and Privacy Commissioner for British Columbia. These guidelines do not affect the powers, duties, or functions of the Information and Privacy Commissioner regarding any complaint, investigation, or other matter under PIPA.