

## Guidance on FIPPA's FOI process



OFFICE OF THE  
**INFORMATION &  
PRIVACY COMMISSIONER**  
FOR BRITISH COLUMBIA

## PURPOSE OF THIS GUIDANCE DOCUMENT

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This guide provides general information about the freedom of information request process, when an applicant makes a request to a public body for access to records (also commonly referred to as a FOI request).

Under British Columbia's *Freedom of Information and Protection of Privacy Act* ([FIPPA](#)), an applicant has the right to make a request to a public body for access to records, and a public body must respond to the request. FIPPA also sets out when a public body may or must refuse access to information in the records.

FIPPA requires an applicant to make a request for records in writing and provide sufficient detail to enable the public body to identify the records sought.<sup>1</sup> When an applicant makes a request, the public body should document the request when it is received. FIPPA also requires the public body to assist the applicant by, searching diligently for responsive records, and responding without delay. (For more, see our [Tips for Requesting Records](#) infographic).

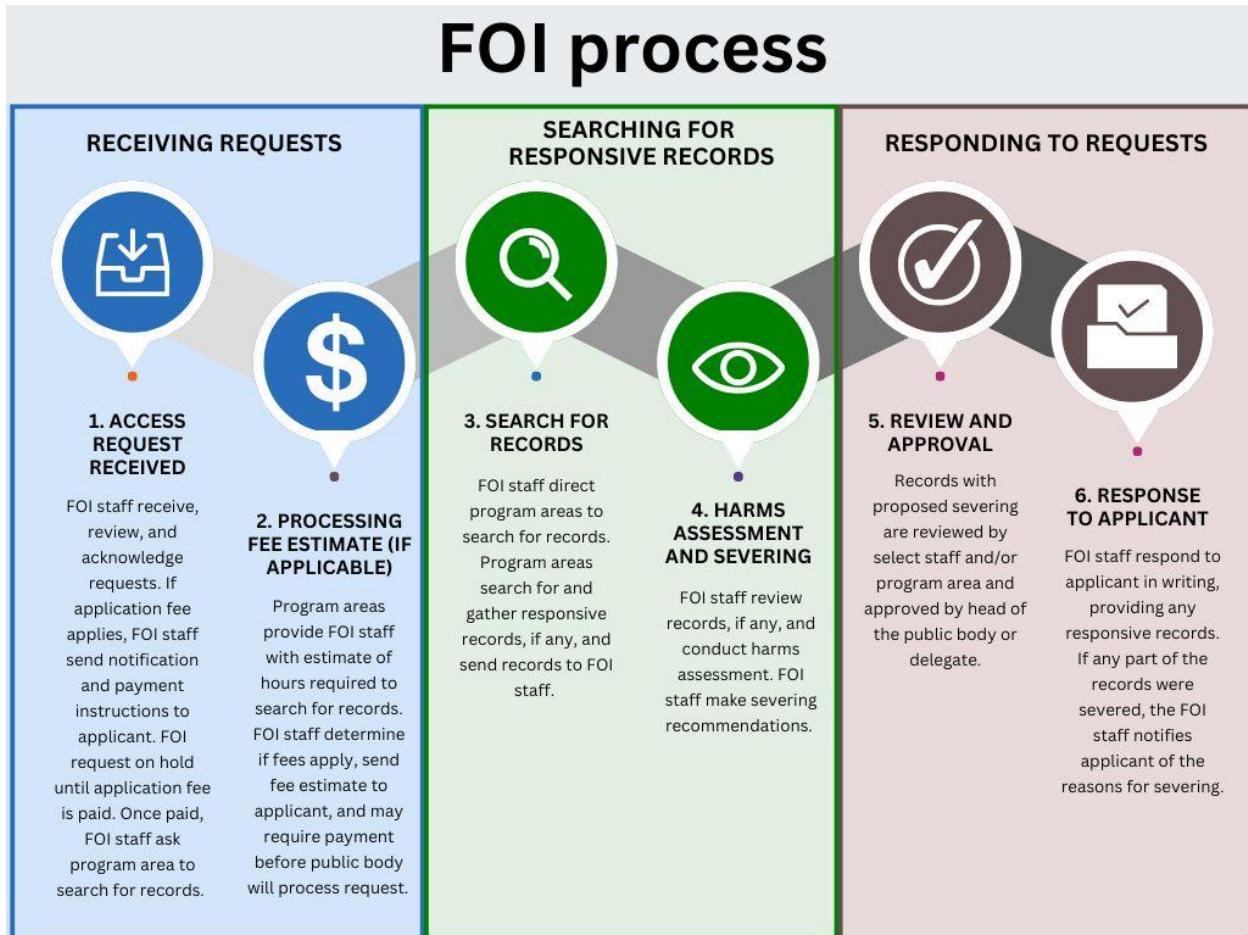
## STANDARD FOI PROCESS

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The following figure depicts a standard FOI process a public body commonly follows when it receives an access request; however, each public body's FOI process may be slightly different or include additional steps. While FOI processes may differ slightly, all public bodies must comply with FIPPA's requirements when responding to requests.

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<sup>1</sup> FIPPA s.5(1).



## RECEIVING REQUESTS

The public body should promptly record the date it receives a request, as the statutory 30-day time limit to respond begins the next day.<sup>2</sup> The public body should also promptly acknowledge receipt of the request and clarify with the applicant any aspects of the request necessary to assist the search for records.

<sup>2</sup> 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.

Public bodies may require applicants to pay a \$10 application fee for requests for general records (not for requests involving the personal information of the applicant).<sup>3</sup> <sup>4</sup> However, public bodies are not *required* to charge an application fee, meaning they may choose whether to charge the fee – and many choose not to. If a public body has established an application fee, they are expected to have their own policies for when they may charge or waive payment of the fee.<sup>5</sup> Public bodies must notify applicants when a \$10 application fee applies and may pause the time to respond from when the public body notifies the applicant of the fee until the fee has been paid.<sup>6</sup> (See our infographic, [FIPPA and the Application Fee](#)).

Separate and distinct from an application fee, a public body may also charge a processing fee if the time to locate, retrieve, produce, or prepare general records for disclosure exceeds three hours, or for costs to provide a general record, including shipping and handling. This fee applies only to requests that are not for the applicant's own personal information.<sup>7</sup> The public body must first provide a fee estimate to the applicant. Once they do, the statutory time limit to respond is paused. It starts again once the applicant pays the required fee or deposit, or the public body waives the fee.

A public body must use its discretion in determining whether to charge applicants a processing fee and must consider waiving processing fees if the applicant makes a written request to have it waived. Reasons for requesting a fee waiver include an applicant's ability to pay, that the record relates to a matter of public interest, or "for any other reason it is fair to excuse the payment."<sup>8</sup>

## SEARCHING FOR RESPONSIVE RECORDS

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After receiving and, if necessary, clarifying a request for records, the public body must conduct a search for responsive records. Efforts in searching for records must conform to what a fair and reasonable person would expect the public body to do. As such, public bodies should:

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<sup>3</sup> General records are records held by public bodies that do not contain the personal information of an applicant.

<sup>4</sup> Section 13(2) of the *Freedom of Information and Protection of Privacy Regulation* sets the application fee at \$10.

<sup>5</sup> Any decision to charge a fee should be made in a fair and transparent manner. Public bodies that administer an application fee should establish a policy outlining the circumstances for when they will charge or refund the fee. Investigation Report 23-01: Access application fee six-month review <https://www.oipc.bc.ca/investigation-reports/3744>.

<sup>6</sup> Investigation Report 23-01 Access application fee six-month review <https://www.oipc.bc.ca/investigation-reports/3744>.

<sup>7</sup> FIPPA s.75(1)(a). Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 155/2012 provides a schedule of the maximum amount of fees that public bodies may charge for services.

<sup>8</sup> FIPPA s.7(4).

- train and provide guidance to employees on the appropriate steps for searching for responsive records;<sup>9</sup>
- train employees on records management, records retention, and the appropriate storage of records;<sup>10</sup>
- maintain a record that includes a reasonably detailed description of what the public body did to search for responsive records;<sup>11</sup> and
- be prepared to describe to the applicant or to the OIPC the potential sources of records, sources searched, sources not searched (and reasons for not doing so), and how much time staff spent searching records.<sup>12</sup>

## RESPONDING TO APPLICANTS

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FIPPA requires that “a public body make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.”<sup>13</sup> (See infographic, [10 Tips for Public Bodies Managing Requests for Records](#)).

### Without Delay

FIPPA requires a public body to make every reasonable effort to respond sooner than the required 30 days.<sup>14</sup> If the public body cannot meet the deadline, it may take a 30-day extension if:

- the applicant did not provide sufficient detail to identify the record(s) requested,
- the request involves a large number of records such that meeting the time limit would unreasonably interfere with public body operations,
- more time is required to consult with a third party, or
- the applicant has consented to an extension.<sup>15</sup>

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<sup>9</sup> OIPC's 10 Tips for Public Bodies Managing Requests for Records (<https://www.oipc.bc.ca/documents/guidance-documents/2016>).

<sup>10</sup> OIPC's 10 Tips for Public Bodies Managing Requests for Records (<https://www.oipc.bc.ca/documents/guidance-documents/2016>).

<sup>11</sup> OIPC Investigation Report F15-03, Access Denied: Record Retention and Disposal Practices of the Government of British Columbia at p. 47, para. 7 (<https://www.oipc.bc.ca/investigation-reports/1874>).

<sup>12</sup> OIPC Order 00-32 at p. 5 (<https://www.oipc.bc.ca/orders/603>).

<sup>13</sup> FIPPA s.6(1).

<sup>14</sup> FIPPA s.7(1) and OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>).

<sup>15</sup> Applicant consent must be in writing and be done in a manner that specifies the period of time of the extension for which the applicant is providing consent.

The Commissioner may also permit further time extensions, in these circumstances or for any other reason the Commissioner considers fair and reasonable.<sup>16</sup>

### Openly, accurately, and completely

When responding to requests for records, FIPPA requires public bodies to tell applicants if they are entitled to access the record or part of the record, and where, when, and how access will be given.<sup>17</sup>

Public bodies may withhold certain information from applicants.<sup>18</sup> Some of the exceptions are mandatory under FIPPA, meaning that the public body must withhold the information, and some are discretionary. Public bodies must conduct a line-by-line review of records and only sever information that meets these discretionary or mandatory exceptions. When a public body exercises its discretion to withhold information from an applicant, it must seriously consider the harms and benefits of severing that information.

Public bodies must also provide applicants with reasons for refusing all or portions of records and include the section of FIPPA that authorizes or requires them to withhold the information. Further, public bodies must provide contact information for an employee of the public body who can answer questions about the refusal, and public bodies must also inform applicants that they may request a review by the OIPC.

If the public body does not find records responsive to a request, the OIPC expects the public body to explain to the applicant in writing why no records were found.

## REQUESTS FOR REVIEW AND COMPLAINTS TO OIPC

If an individual is not satisfied with a public body's response to an access request, the individual can complain to, or request a review, by the OIPC.<sup>19 20</sup> The OIPC may open a file to investigate the matter. (See infographics, [How to request a review](#), and [How to make a complaint](#)).

The OIPC has the authority to work with a public body to resolve the matter, including if:

- a duty imposed under FIPPA has not been performed;

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<sup>16</sup> FIPPA s.10(2).

<sup>17</sup> FIPPA s.8(1).

<sup>18</sup> See Part 2 of FIPPA (ss.12 through 22.1).

<sup>19</sup> A request for a review of a decision of a public body must be delivered within 30 days after the person asking for the review is notified of the decision, or a longer period allowed by the Commissioner – FIPPA s.53(2).

<sup>20</sup> For the purposes of requesting a review, the failure of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record – FIPPA s.53(3).

- a time extension for responding to a request is not in accordance with s. 10(1) of FIPPA;
- a processing fee required under FIPPA is inappropriate; or
- a public body refuses to make a correction requested by an individual about their own information and refuses to annotate the record with the requested correction.

## ADDITIONAL GUIDANCE AND RESOURCES

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The resources listed below may be helpful to public bodies and FOI applicants.

### **Resources for public bodies:**

[10 Tips for Public Bodies Managing Requests for Records](#)

[FIPPA and the Application Fee](#)

[Time Extension Guidelines for Public Bodies](#)

### **Resources for FOI applicants**

[Tips for Requesting Records](#)

[How to request a review](#)

[How to make a complaint](#)

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.

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