

# OVERVIEW

## ACCESS APPLICATION FEE SIX-MONTH REVIEW

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### Background

In November 2021, the *Freedom of Information and Protection of Privacy Act* (FIPPA) was amended to permit, for the first time, public bodies to charge a \$10 application fee for access to general information. This new fee is on top of the existing authority for public bodies to charge fees for processing access requests. Within days of the fee amendment coming into force, the BC Government began charging a non-refundable application fee for all access requests for general records.

In response, the Information and Privacy Commissioner expressed concern that the application fee might create a barrier for some access applicants, and initiated this review.

### Overview

The OIPC analyzed records relating to how the BC Government administered the application fee and the fee's impact on access requests for general records. The OIPC also surveyed 109 other public bodies to better understand if and how they were implementing the application fee. Of the public bodies surveyed, 24 charge an application fee and another 24 were considering doing so in the future.

The preliminary data disclosed mixed findings:

- Political parties made fewer requests across all three periods, including a substantial decline before the fee was implemented. However, it is not clear how much of this drop related to the \$10 application fee, because the Official Opposition were making fewer requests even prior to the new fee, in response to existing processing charges applied by the BC Government.
- The number of requests made by individuals increased before and after the fee was introduced.
- Media submissions argued the application fee was a barrier to requesting records, and the preliminary data supports this. Both the total number of requests and the number of unique media applicants fell following the implementation of the fee.

While it is too early to draw conclusive judgements on the fee's long-term impact on all applicants; the preliminary data points to a clear need to carefully monitor matters going forward.

The investigation also revealed concerns around the administrative implementation of the fee. For example, many public bodies have not developed criteria for when not to charge or to refund the fee where fairness warrants. In other cases, public bodies do not accept certain payment methods, which has the practical effect of denying access. And where fees are imposed it is incumbent upon public bodies to properly notify applicants of this fact.

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### Recommendations

#### BC Government process

*Recommendation:* The BC Government should establish a policy to address the collection of fees where they transfer requests to other public bodies outside of provincial government.

#### Notice of the application fee

*Recommendation:* Public bodies that administer an application fee for general records should clearly inform applicants without delay when a fee applies.

#### Time limit to respond

*Recommendation:* A public body must ensure the time limit to respond is not suspended when they have failed to notify the applicant of the requirement to pay the fee.

#### Payment delays and barriers

*Recommendation:* Public bodies that administer an application fee should have multiple fee payment options available to ensure expediency and accessibility for all applicants. This should include an option that permits an applicant to maintain anonymity.

#### Exercise of discretion

*Recommendation:* Public bodies that administer an application fee should establish a policy outlining the circumstances for when they will charge or refund the fee.