



SPECIAL REPORT 21-03

The impact of COVID-19 on access to information

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COMMISSIONER'S MESSAGE

Access to information is vital to ensuring the transparency and accountability of government, even more so in times of crisis. The decisions made by public bodies during the pandemic impact all of us, and, subject to certain exceptions, there is a right of access to the records relating to those decisions.

The purpose of this report is to give the public a sense of how the access system generally performed under the pressures of the first year of the COVID-19 pandemic.

We chose to focus on public bodies whose operations were uniquely impacted by COVID-19, particularly those on the front lines of our public health response. These public bodies have arguably been under the most strain to deal with the immediate demands of the pandemic, and in doing so also had the records and information most sought after by the public.

This report focuses on their experience responding to formal access requests rather than on more broader concerns about the proactive disclosure of data, although the latter issue is given some comment as it is the preferred means of making information available and has been the subject of much debate.

While most of the public bodies surveyed clearly experienced a rise in requests, what was more apparent were the competing pressures within and between public bodies that made retrieving and reviewing records more challenging. This was not unexpected.

My office anticipated these and other challenges early on and proactively provided time extensions to allow public bodies to find their footing. The public bodies included in this research, by and large, took steps to adjust to the new working environment. Indeed, I was encouraged by the staff of public bodies we interviewed who reported that the pandemic has helped put a spotlight on the importance of access to information systems and the need to strengthen them.

However, in the course of our OIPC's other work, we have found instances where public bodies have claimed to be unable to respond at all to requests during the pandemic. Freedom of information legislation is designed to give citizens recourse in these kinds of situations, and my office has found it necessary to order the release of records where this has happened.

Finally, the release of this report coincides with a period of significant public conversation about the proactive disclosure of records and information. This is an issue my office has focused on for many years. Current legislation dictates that public bodies proactively disclose information only in limited circumstances. Of further import is that I do not possess a general power to order a public body to proactively disclose particular records. However, I continue to urge public bodies to exercise their discretion to use proactive disclosure. Beyond promoting greater accountability, it can, in some instances, negate the need for the public to go through

the formal task of initiating an access request. Proactive disclosure also makes the information provided more timely and relevant, which is of critical importance during an emergency.

This issue has been thrust in the spotlight by the proactive disclosure of pandemic related data by BC's Provincial Health Officer. These disclosures are necessary to help the public understand the risks they face and the overall public health response. And while they have, at points, been criticized, the mostly civil public debate about the level of proactive disclosure has been encouraging, as have government moves to modify its information releases.

Proactive disclosures aside, citizens are not required to wait on government decisions for the release of information. Subject to certain exceptions, the legislation gives the public a right of access to records and a means to exercise that right. For the most part, the numbers of requests received by health authorities and the Ministry of Health suggest that this is happening now. My office will continue to exercise its statutory authority to ensure that citizens get the records and information that the legislation allows.

Michael McEvoy

Information and Privacy Commissioner for BC
December 15, 2021

EXECUTIVE SUMMARY

This report is about the impact of the COVID-19 pandemic response on key public bodies, and their obligation to respond to general requests for records under BC's *Freedom of Information and Protection of Privacy Act* (FIPPA). It focuses primarily on the experiences of government and health authorities, which are both uniquely impacted by the demands and challenges of the pandemic and possess records of particular interest to the public.

The OIPC conducted this research with a view to three things: affirming the importance of access to information during emergency situations, assessing the impact of the pandemic on the access to information systems of those public bodies most affected, and identifying strategies and approaches that helped mitigate pressures during the first year of an ongoing pandemic.

To undertake the research, staff at the OIPC:

- conducted interviews with three health authorities and the Information Access Operations¹ (IAO) Branch of the BC government;
- analyzed statistics provided by these public bodies, along with casefile information provided by the other health authorities and from the OIPC's own case management system; and
- reviewed published materials by the OIPC, other regulators and the media about the impacts of the pandemic on access to information.

The research found that the first year of the pandemic created challenges for health authorities and the provincial government in responding to access requests.

Five of the six health authorities experienced increases in access requests in the period reviewed. In another case, the number of requests decreased but the volume of records within those requests increased.

Staff redeployment in response to the pandemic created delays in retrieving records and consultation on the release of those records. There was a competing priority between responding to calls for records and questions about their content, and the immediate operational demands faced by many of those involved in pandemic response. Interviewees also noted that getting formal approval from the head of the public body or their delegate to release records could prove challenging as those parties also faced competing demands for their time and attention.

¹ The IAO processes all freedom of information requests for access to records on behalf of the BC government ministries.

Perhaps surprisingly, the public bodies interviewed generally did not cite the shift to working from home as a cause of undue hardship or strain. It appears that in most cases, the public bodies were accustomed to working with electronic records or already had work from home policies in place that existed before the widescale transition to remote work. However, the shift to remote work was found to be a factor in cases where staff would need to go into an office to retrieve or reproduce physical records responsive to the request.

Most public bodies increased the resources to sustain their access operations and redeployed resources to be better able to respond to requests. For example, staff not normally involved in the direct processing of requests were called on, in some cases, to transition to this work.

Some of the staff interviewed cited a benefit that the demand for records increased the visibility of their work within the public body. In some cases, this allowed for an increase in resources, more opportunities to provide education and guidance, and regular contact with the head of the public body or delegate needed to approve records for release. All of these measures can help to speed up the process of getting records and information to the public.

The OIPC also adjusted processes to respond to the impact of the pandemic on records requests. The *Freedom of Information and Protection of Privacy Act* (FIPPA) equips the Commissioner with important tools that were useful for the emerging situation. One such tool was the ability to grant extensions when deemed “fair and reasonable to do so”. The Commissioner granted two such extensions for all public bodies in the province, one on March 18th 2020 and another on April 22nd of 2020 which together resulted in 1,856 extensions.² Additional extensions were granted in subsequent months to those public bodies most impacted by the pandemic.

While these extensions did slow down response times, they did not dismiss the public bodies’ obligations to respond or their duty to assist applicants. The OIPC has ordered the release of records where the pandemic had been cited as a reason for not doing so.

Finally, the report comments on the ongoing discussion in the province about the proactive disclosure of records and information related to the pandemic. FIPPA establishes limited circumstances in which public bodies are obligated to proactively disclose information. For instance, the Act requires disclosure, without delay, of information that is about a risk of significant harm to the health and safety of the public or a group of people, or is for any other reason, clearly in the public interest. There is a high threshold for such disclosures and none occurred over the period considered in this report in respect of the pandemic.

² Public bodies were required to track and report the number of extensions taken under these provisions.

1 COVID-19 IN BC

In January 2020, BC confirmed its first case of COVID-19. By mid-March, BC recorded Canada's first death due to COVID-19, closed schools and dine-in restaurants, and declared a state of emergency.³

Also during mid-March, the OIPC published the Commissioner's first decision to allow public bodies a time extension for access requests placed between March 1 and April 30, 2020. Public bodies were required to provide the OIPC with a list of requests extended under this decision by June 30, 2020. In April, the OIPC published the Commissioner's second decision to allow public bodies a time extension for access requests placed between May 1 and May 15, 2020.⁴ Public bodies were again required to inform the OIPC, this time by July 30, 2020. In total, resulting from these decisions, public bodies took 1,856 extensions.

In May, BC entered phase two of its reopening plan, moving away from the initial lockdown and entering a period of sustained public health measures. In June, schools reopened and BC moved into phase three of the restart plan, allowing non-essential travel throughout the province. By November, however, BC experienced its highest COVID-19 case counts per day and in December prohibited large gatherings.⁵ Case counts continued to fluctuate in the coming months.

In June 2, 2021, Information and Privacy Commissioners across Canada publish joint resolution⁶ citing the pandemic's negative impact on the speed of processing access requests.

By the fall of 2021, several health authorities reported to the OIPC that they were receiving a consistently high volume of requests, or a volume exceeding that of the 2020/21 fiscal year.

At the time of publishing this report, the COVID-19 pandemic is still attracting a high degree of public interest, and as the Delta and now Omicron variants spread, the need for more information is likely to continue. On September 20, 2021, Dr. Bonnie Henry was quoted as saying "I think it's going to be a tough fall and winter", adding that COVID-19 is "still going to cause serious illness in some people for the next couple of years".⁷ To date, this rings true.

³ <https://bc.ctvnews.ca/scroll-through-this-timeline-of-the-1st-year-of-covid-19-in-b-c-1.5284929>.

⁴ <https://www.oipc.bc.ca/news-releases/2404>

⁵ <https://bc.ctvnews.ca/scroll-through-this-timeline-of-the-1st-year-of-covid-19-in-b-c-1.5284929>.

⁶ <https://www.oipc.bc.ca/news-releases/3543>

⁷ <https://www.theglobeandmail.com/canada/british-columbia/article-a-defiant-dr-bonnie-henry-defends-her-covid-19-decisions/>

2 BACKGROUND & METHODOLOGY

During the summer of 2021, the Commissioner exercised his authority under s. 42(1)(e) of FIPPA to research how the ongoing COVID-19 pandemic has impacted public bodies' ability to meet their requirements to respond to access requests.

The Commissioner undertook this work with a view to: affirming the importance of access to information during emergency situations, assessing the impact of the pandemic on the access to information systems of those public bodies most affected, and to identify strategies and approaches that helped mitigate the pressures of the pandemic.

The pandemic has threatened the well-being of all British Columbians and has challenged and continues to challenge our institutions, both private and public. A recurring concern of the OIPC is how our access to information system is performing, especially important during an emergent time. BC has certainly had its share of emergencies of late, with severe weather, forest fires, drought, and now flooding.

Regulators across Canada recognized that access and privacy rights were being substantially impacted by COVID-19.⁸ A joint resolution by Canadian Commissioners and Ombudspersons noted that the pandemic accelerated troubling trends that existed before the advent of the pandemic, including “the slowing down of processing access requests”.⁹

The OIPC selected this topic, in part, due to the corresponding sudden shift public bodies experienced transitioning to a largely digital work-from-home environment. In particular, the first year of the pandemic saw challenges such as:

- staffing or resource disruptions, and learning curves for staff working from home;
- the deployment of new technologies, including those used in the processing of requests for records;
- increasingly electronic records keeping;
- record keeping specifically related to managing COVID-19 and the transition to working from home (i.e., expense records, amended policies, etc.); and
- security concerns related to or impacting the above.

To better understand the impacts of COVID-19 on the operations of public bodies and the ability of citizens to access records during the first fiscal year of the pandemic, OIPC researchers conducted:

⁸ <https://www.oipc.bc.ca/news-releases/3543>

⁹ <https://www.oipc.bc.ca/news-releases/3543>

1. Interviews with FOI staff from three health authorities' Freedom of Information (FOI) departments and the Province's Information Access Operations (IAO) branch (which manages requests on behalf of ministries).
2. High-level analysis of the numbers of access requests received and processed by these public bodies and the other health authorities, along with relevant OIPC files, documents and orders.
3. A scan of media and other sources, including international reports, articles, conferences, speeches, and statements.

The interviews conducted by OIPC staff covered a range of questions about:

- the challenges and complexity of responding to requests during the pandemic;
- changes and modifications made to access to information processes; and
- lessons learned, technological adjustments, and strategies used to process requests for records during the first year of the COVID-19 pandemic.

Where possible, staff collected data from health authorities to help illustrate the numbers of requests for records they received, processed, and were outstanding at the time of our review.

Staff also considered the OIPC's role and whether the office's efforts were successful in helping public bodies adapt to new and pressing challenges. OIPC researchers did this largely by conducting a high-level analysis of data in the OIPC case management system. This involved looking into the number of requests for review and complaints received during the 2020/21 fiscal year, time extensions granted by the OIPC, and deemed refusals (where the public body failed to respond for a request for records within the legislated timeline under s. 7 of FIPPA and the applicant requested a review).

Analysis of OIPC actions during this time also involved a review of published materials, such as decisions and statements made by the Commissioner, guidance documents, and speeches and news releases from throughout the 2020/21 fiscal year.

Lastly, OIPC staff analyzed news stories related to COVID-19's impact on access to information, with an emphasis on BC, as well as the joint resolution on access and the pandemic issued by Information Commissioners and Ombudspersons across the country in June 2021.

3 ACCESS DURING THE PANDEMIC

Privacy and access officials, academics, media, and other stakeholders have discussed the importance of ensuring regular access to information processes are maintained in emergency situations. Central to all of these is that access rights are more important than ever in a crisis, as public bodies and officials make major decisions that impact public resources, and implement sweeping new rules and requirements.

3.1 Countering Misinformation and Disinformation

The COVID-19 pandemic has been accompanied by a secondary crisis, dubbed the ‘infodemic’, “an overabundance of information, some which is true and some which is not, which made it very difficult for people to find facts and reliable sources”.¹⁰ In the early months of the pandemic, nearly all (96%) Canadians who used the internet to find information about the pandemic were exposed to “COVID-19 information that they suspected was misleading, false or inaccurate”.¹¹

The information ecosystem is of increasing importance, and during an emergency the health of this ecosystem has direct and tangible consequences for public health. A joint statement published by several prominent international organizations, including the World Health Organization (WHO) and International Federation of Red Cross stated “the technology we rely on to keep connected and informed is enabling and amplifying an infodemic that continues to undermine the global response and jeopardizes measures to control the pandemic”.¹²

A resilient access to information regime is a long-established tool to counter such trends. A United Nations report on the importance of pandemic era access noted that “the more official the disclosure, the less space is available for misinformation, disinformation and rumour”.¹³ The OECD stipulates that “to counter misinformation, the public and policy makers need to rely on healthy, resilient information environments.”¹⁴

3.2 Accountability and Trust

During an emergency situation, and especially during one as large scale as the pandemic, there is a pressing need for clear and accountable decision making. This need was clearly articulated by journalist Daphne Bramham, when she wrote that “Since the pandemic, there’s never been a

¹⁰ <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00003-eng.htm>

¹¹ <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00003-eng.htm>

¹² <https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>

¹³ “The Right to Information in Times of Crisis”, https://en.unesco.org/sites/default/files/unesco_ati_iduai2020_english_sep_24.pdf, pg. 3.

¹⁴ <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00003-eng.htm>, and <https://www.oecd-forum.org/posts/fighting-disinformation-a-key-pillar-of-the-covid-19-recovery>

greater need for independent scrutiny and questioning of governments' unprecedented use of emergency powers".¹⁵

This scrutiny is afforded, in part, by our access to information system. In a joint resolution, information commissioners from across the country stated that access to information is essential for "governments to be held accountable for their actions and decisions, and to maintain the public's trust in times of widespread crisis".¹⁶

Information conveyed proactively or in response to an access request that demonstrates the rationale for a public body's decision making allows the public to both better understand the health risks they face and the public health measures necessary to protect themselves and their community. As noted by Patricia Kosseim, Information and Privacy Commissioner of Ontario: "Information breeds the level of trust needed for people to follow public health guidance. Conversely, secrecy spawns skepticism that only leads to cynicism and non-adherence".¹⁷

3.3 Legal Duty

Ultimately, the most basic consideration in respect to the need to respond to records is the legal requirement to do so. Regardless of the constraints or hardships faced, public bodies have a legal obligation to respond to access requests.

Despite the stringent requirements in the Act, set out as they are to protect and give meaning to the right of access, FIPPA does provide some relief to public bodies when dealing with difficult circumstances. Public bodies can, for example, take time extensions in certain circumstances, charge fees for large and time-consuming requests in others, and in very limited cases, seek permission to disregard requests.

Of these, time extensions are the most frequently used. Public bodies can take extensions beyond the 30-day response time required by the Act, for any of the reasons listed in s. 10. Furthermore, should the circumstances necessitating an extension persist, public bodies can apply to the Commissioner for additional time to process the request.

The Commissioner is given the authority, under s. 10(2)(b) of FIPPA to grant extensions when, in his view, it is "fair and reasonable to do so." He has granted such extensions in previous emergency situations, and did so again in the early days of this pandemic.

As noted in the timeline above, on March 18, 2020 and again on April 22, 2020, the Commissioner extended the time period for public bodies to respond to requests under

¹⁵ Daphne Bramham. "Two human-rights groups need reality checks" Vancouver Sun. 16 July 2021.

¹⁶ <https://www.oipc.bc.ca/news-releases/3543>

¹⁷ Kosseim, Patricia (Ontario Commissioner), "A Year like no other: Championing access and privacy in times of uncertainty" 24 June, 2021. <https://www.ipc.on.ca/a-year-like-no-other-championing-access-and-privacy-in-times-of-uncertainty/>

s. 10(2). Both decisions applied to requests received during a specified period, which was meant to give public bodies time to adjust to the major shifts in their operations. For accountability purposes, he required public bodies to list the requests extended under this decision, and to notify applicants of the extension, including when a response could be expected. Relying on these two decisions public bodies took 1,856 extensions.

The proactive measures referenced above have been supplemented by decisions clarifying the law respecting the obligations of public bodies' during the pandemic. In Order F20-57, for example, the Commissioner rejected the argument that the *Public Health Act* overrides the Ministry of Health's requirement to comply with the disclosure duty under s. 25(1)(a) of FIPPA.¹⁸

In another decision, Order F21-33, the OIPC's Director of Adjudication ordered a Health Authority to respond to a request for records.¹⁹ In coming to this decision, the adjudicator plainly stated that the pressures and challenges brought on by the pandemic were no excuse for not responding. The adjudicator pointed out that the requirements in the Act are legal duties and that it was the responsibility of the public body to assign new resources to deal with the increase in demand.

4 PANDEMIC CHALLENGES AND PRESSURES

Before the state of emergency was declared in March 2020, the OIPC was already drawing attention to the challenges faced by some public bodies to meet the timelines in the Act.

For example, on September 2, 2020, the OIPC issued its sixth report concerning the timeliness of government's responses to requests for records: "Now is the time: A report card on government's access to information timeliness", which underscored the importance of these obligations.²⁰

Public bodies detailed a number of challenges the pandemic placed on the access to information system. These include:

- a greater volume of requests;
- a greater complexity and scope of requests;
- challenges created by staff redeployment and remote work;
- difficulties getting records reviewed by subject matter experts who were busy responding to the crisis, as well as by stakeholders in other public bodies who have an interest in the records but were also caught up in the crisis; and

¹⁸ Commissioner McEvoy, Order F20-57: Ministry of Health, <https://www.oipc.bc.ca/orders/3494>.

¹⁹ Director of Adjudication Barker, Order F21-33: Vancouver Coastal Health Authority, <https://www.oipc.bc.ca/orders/3565>.

²⁰ <https://www.oipc.bc.ca/special-reports/3459>

- the challenge in finding the time to have the head of the public body or their delegate approve records for release.²¹

4.1 Requests for Records & Complaints to OIPC

The year over year volume of access to information requests varied across health authorities. In several cases the number rose while in others the numbers were stable or even decreased. Data provided by the public bodies showed an increase in the number of requests in five of the six health authorities:

- The Provincial Health Services Authority experienced a 167% increase in the number of access requests. In the year previous to the pandemic, the authority received 171 requests, increasing to 457 requests for records in 2020/21.
- Northern Health saw an increase of 91%. They received 105 requests in 2020/21, up from 55 in 2019/20.
- Requests to the Ministry of Health increased 43% from 481 requests in 2019/20 to 688 in 2020/21.
- Vancouver Coastal Health received 179 requests in 2020/21, a 26% increase from the 142 requests in the 2019/20 fiscal year.²²
- Fraser Health reported a 23% increase, from 175 requests for records in 2019/20 to 215 in 2020/21.
- Interior Health had a 9% increase in requests between 2019/20 and 2020/21, rising from 332 to 362 and continuing a trend of steady increase from the previous fiscal year.

Comparatively, other public bodies reported a decrease in requests:

- Island Health showed a slight decrease (4%) in requests from 504 to 483 between the 2019/20 and 2020/21 fiscal years.
- BC government ministries, on average, received 10,268 requests in 2020/21, down 21% from the 13,055 requests they received the year prior.²³

During the same period OIPC files were either stable or showed a decrease:

- The number of complaints about the handling of access to information files by public bodies showed a 1% increase, from 382 complaints the previous year to 386 complaints in 2020/21;
- Deemed refusal files (where the public body has not responded to the request for records within the authorized timelines and the applicant complains to the OIPC) declined slightly, by 4%, from 184 files to 177; and

²¹ Joint Privacy Managers Extension Request email to Twiss, oline, 26 June, 2020, pg. 1 [[210526](#)]

²² The VCH fiscal year is from Oct 1 to Sept 30.

²³ Received from IAO October 7, 2021.

- The number of requests for review of public bodies' decisions to withhold information decreased 13% from 477 to 415 requests.

As individuals have the right to challenge a public body's decision to withhold records, the final bullet above, in particular, can be an indicator of applicant satisfaction (or lack thereof) with the responsiveness of public bodies. Though this number could vary for several reasons it is somewhat encouraging that it trended downwards over the past fiscal.

4.2 Complexity and Scope

Regardless of whether public bodies witnessed an increase in the number of requests, the health authorities interviewed reported increased scope and complexity of requests.

OIPC staff heard about challenging requests that required the review of hundreds of documents. For example, in one instance, a requestor asked for all COVID-19 related correspondence over a multi-month period, that potentially included hundreds of emails per day. Other examples given included requests for all COVID-19 related correspondence between a health authority and a facility over a three-month period, and requests that included a large number of itemized queries, each the equivalent of an individual request.

The increasing amount of records and data being sought and produced in response to requests was illustrated by Island Health, which saw a decrease in requests, but reported that the page volume during this time increased by 8,690 pages.

Although public bodies are encouraged to work with applicants to focus the scope of requests when possible, some of the public bodies held the view that some applicants were reluctant to narrow requests. Public bodies appeared reluctant to charge fees considering the nature of the material and the pressing issues and concerns raised by the pandemic.

Public bodies also reported that requests often required consultations with other public bodies whose information was included in the responsive records. As noted by one health authority, "the landscape is integrated and complex" and, in a number of cases, required a high degree of consultation.

Health authorities themselves are large and complex intuitions, and the work they perform often involves other public bodies. This can make consultations, both within the health authority and with other public bodies, a time-consuming process.

4.3 Staff Redeployment and Conflicting Priorities

OIPC staff found that barriers to retrieving records and having them reviewed, including whether decisions about exceptions to disclosure might apply, were compounded by staffing pressures and changes and redeployments in various departments. One striking example

included a case where the access to information staff from a Health Authority sent requests to a finance department, only to find out that they were redeployed to assist with the distribution of personal protective equipment.

Some of the access staff talked about being in a difficult position trying to process requests while at the same time being sensitive of the constraints facing other areas whose records and input they needed.

A similar sentiment was expressed in an interview with IAO, where staff suggested that the pressures and conditions brought on by the pandemic made it more challenging to engage staff from ministries that were engaged on the front lines of the pandemic.

4.4 Limited Access to Physical Records

Notably, health authority staff rarely cited the move to remote work as a serious detriment to their ability to respond to access requests. Public bodies with work-from-home policies already in place prior to the pandemic reported that this increased readiness helped with the transition to remote working.

Areas of government more reliant on physical documents appeared to be the most impacted by the shift to work at home as staff faced challenges going to the office to get or reproduce records. For example, IAO continued to receive record requests for files from the Ministry of Children and Family Development, which included physical documents. IAO was able to implement workplace safety measures to address these issues. In some instances, they also began to partially fulfill requests with available digital documents, and seek applicant consent for extensions for physical documents.

OIPC findings compare favourably to the federal jurisdiction where the transition to remote work posed a challenge for public bodies.²⁴ Various departments faced significant delays as staff were sent home for remote work but the infrastructure and IT systems could not keep up. Media reports pointed to the limited secure digital connections as an obstacle to meeting access obligations.

5 ADDRESSING THE CHALLENGES

The public bodies interviewed reported employing a variety of means to address the challenges experienced during the first year of the pandemic. These included:

- increased resources and agile approaches;
- increased awareness;
- time extensions; and
- team building.

²⁴ <https://ottawacitizen.com/news/national/the-gatekeepers-where-atip-offices-fell-short-during-the-pandemic>

5.1 Increased Resources and Agile Approaches

Some of the public bodies interviewed demonstrated agility in responding to the added demand for records. These public bodies shifted resources internally to assist with the expanded workload, hired temporary and permanent positions, and contracted outside resources to assist. Several interviewees also reported that staff not normally involved directly in processing access requests were able to pivot to this role.

One health authority brought in an external expert to review their processes and to make recommendations to their operations moving forward.

Another health authority described their use of staged releases to help applicants get some records while they continued to process the larger request. This is an approach advocated by the OIPC, and it can benefit both the applicant and the public body. A staged release approach is particularly useful when processing large and complex requests.

One interviewee underscored the importance of building trust with internal stakeholders by having a well informed and educated FOI team. The role of trust was crucial when it came to releasing records, as that trust enabled other staff to allow the access team to perform certain review and approval functions that would have otherwise needed further input. This delegation of responsibility can be effective in reducing processing times and should be implemented, when appropriate.

5.2 Increased Awareness

A prevailing view heard from the health authority staff interviewed was that despite the stress and challenges brought on by the pandemic, there was increased awareness and appreciation within their public body of the demands and requirements of FOI. Health authorities reported that access staff were able to better connect with executives in the public body that were needed to approve responses.

Interviewees also reported an increase in educational opportunities, both formal and otherwise, that access staff were able to provide, which helped to convey their processes and the requirements of the Act.

One interviewee stated that the awareness towards access to information likely influenced broader information management considerations that could make responding to requests easier going forward. It seems that the demand faced by staff across the public body to produce records in response to access requests during the pandemic may lend itself to the creation and management of records that is more amenable to this process. The benefit of this is to both public body and requestor, as the records that are filed and structured can be more easily retrieved and the decision making and information they convey more accessible.

Access staff at the same authority remarked “sometimes it takes something like COVID-19, or a major privacy breach,” to bring something to the front of mind.

5.3 Time Extensions

Public bodies may take time extensions under s. 10(1) of FIPPA in circumstances where additional time is required, for example, when the applicant does not give enough detail to enable identification of a record, where reviewing a large number of records in the time limit provided would unreasonably interfere with public body operations or to conduct consultation with third parties. They may also extend where the applicant has consented to the extension. After utilizing their authorities under s. 10(1), if public bodies still require more time, they can seek the Commissioner’s approval who, under s. 10(2), can allow further extension where it is “fair and reasonable”.

The usefulness of this provision was recently pointed out by Alberta’s Commissioner, Jill Clayton, who lacks such authority. She recently referred to BC’s FIPPA in recommending amendments to Alberta’s information access legislation that would allow for time extensions in unforeseen emergency or disaster situations.²⁵

As noted earlier, in the spring of 2020, BC’s Commissioner utilized s. 10(2) of FIPPA to address the impact on public body operations by the COVID-19 pandemic. He granted public bodies in the province permission to extend the time for responding to access requests received between March 1, 2020 and April 30, 2020 and from May 1st and May 15th. Public bodies reported using these decisions to take 1,856 extensions.²⁶

Later in March of 2020, the OIPC permitted IAO, who processes access requests on behalf of BC Government ministries and has the highest volume of time extension requests, to submit consolidated extension requests to the OIPC on a weekly basis for requests received prior to March 1, 2020 that were not already overdue.

The practice of aggregating time extension requests, whether under ss. 10(2)(a) or (b) of FIPPA, continues to be used by IAO and has also been used by other public bodies. In these examples, public bodies supply the same information to the OIPC as typically provided in individual time extension request forms except in a table format (rather than multiple forms) and the OIPC reviews each request individually and approves or declines each one, often with shorter timeframes than originally requested by the public body. Aggregating requests in this way allowed the public body to save time in compiling their applications and in discussing the requests with the OIPC. In future, the OIPC may continue to allow these types of aggregated

²⁵ https://www.oipc.ab.ca/media/1118979/letter_minister_glubish_foip_pipa_recommendations_nov2020.pdf

²⁶ Which explains why extension requests made by both public bodies (under FIPPA) and private organizations (under the *Personal Information Protection Act*) dropped by 39% between in 2019/20 and 2020/21 (from 6,591 to 4,029 in the period). In addition, the number of requests by applicants seeking a review of a public body or organization’s decision to extend the timelines also dropped by 16%, from 32 requests in 2019/20 to 27 requests in 2020/21.

time extension requests, as these only change the form and not the process for such review and approvals.

5.4 Team Building

Some of the staff surveyed remarked on the pandemic's impact on their own access team's morale and comradery. While OIPC staff did hear of burn out and frustration, caused both by the common stress and anxiety brought on by the pandemic and by workplace fatigue, the OIPC also heard that at the end of the day the teams came together to support each other and deal with the task at hand.

6 PROACTIVE DISCLOSURE

The OIPC has long advocated that public bodies consider proactively disclosing records and information that are in demand. Clearly there is such a demand for information about matters relating to the spread and impacts of COVID-19.

The proactive disclosure of information has largely arisen in the COVID-19 context in two ways.

The first relates to what FIPPA *requires* public bodies to release without an access request, specifically s. 25 of the Act.²⁷ The section requires public bodies to disclose, without delay, information that is about a risk of significant harm to the environment or to the health and safety of the public or a group of people, or which is, for any other reason, clearly in the public interest.

As past cases interpreting s. 25 articulate, the threshold that would trigger a public body's obligation to release information is high. This is because it overrides all the exceptions to disclosure in FIPPA, such as those that protect privacy, cabinet confidences, commercial interests, and legal privilege.

The requirement to disclose information under this section in the context of the pandemic was considered in Order F20-57. This order dealt with concerns that the Ministry of Health did not proactively disclose information about the transmission of COVID-19 in and around First Nations communities.

In coming to a decision, the Commissioner found that the transmission of COVID-19 clearly posed a significant risk of harm to the health or safety of the public or a group of people. However, the Commissioner also determined that sufficient information was available at the time to enable the complainants and the public to take informed steps to avoid or mitigate

²⁷ It should be noted here that the heads of public bodies are also obligated, as per FIPPA s. 71, to establish "categories of records" for proactive disclosure. The OIPC report on categories of records available without a request can be found at <https://www.oipc.bc.ca/investigation-reports/3432>.

them. This meant that the Ministry was not required to proactively disclose the information sought by the complainants.

However, simply because a public body is not legislated to make a proactive disclosure does not relieve it of its responsibility to consider such disclosures.

FIPPA does not provide the Commissioner with the authority to order the proactive disclosure of any one type of record without a formal inquiry. However, the OIPC has for years pointed to the benefit of doing so. The proactive disclosure of records can allow public bodies to build public trust as well as potentially negating the need for staff to spend hours responding to commonly made access requests.

The proactive disclosure of information has probably taken on the greatest prominence since the outbreak of COVID-19 in BC in 2020. It is an understatement to say that the importance of public awareness and engagement during the pandemic has been critical. That is perhaps most dramatically exemplified by the proactive disclosures, and the discussion about them, that have come from the Provincial Health Officer.

The demand to proactively disclose COVID-19 data outside of any formal requirement in the legislation is the second way this issue has arisen and been debated. Releases made by health officials have made more information and data available, but nonetheless the extent of them have been, at points, criticized. Our democratic system of government depends upon the constructive and sometimes vigorous, but always civil, exchange between our governmental institutions and society. That is, for the most part and to the credit of all, what BC has witnessed.

Much can be learned from this by all public bodies who should, on an ongoing basis, assess their records, identify most frequently requested records, and take steps to proactively disclose them.

This is in fact, a requirement in s. 71 of the Act. This section requires public bodies to identify and make available categories of records for proactive or routine release. Establishing these categories gives certainty to staff and the public about what is or should be made available. Using this section can also allow for the disclosure of records that contain personal information, if the disclosure would not constitute an unreasonable invasion of privacy or the disclosure is authorized under the Act. While the requirements for this section are limited, it does involve an organized and considered approach for making records available.

7 CONCLUSION

Information is critical during any emergency. During the pandemic, the demand for information, through a variety of channels, has demonstrated that need. The right to request records through our access system is a critical backstop to getting that information.

Throughout the pandemic, public officials have been making decisions that impact each and every one of us. Governments have entered into large and expensive contracts on our behalf, and have wielded emergency powers, all of which demand transparency.

Public officials have also asked citizens to make sacrifices both for themselves and for the greater good. This type of action is supported when there is trust that the rationale behind these requests is reasonable considering the facts at hand.

Gaining and keeping this trust is essential. In this environment, it is in the public interest for public bodies to release information that enables a more fact based and knowledgeable discourse about these issues.

We recognize that responding to access requests is challenging work. Add to this the stresses and pressures of the pandemic, particularly on health authorities and other health care bodies, and it was, and continues to be, a difficult and trying situation—both for the staff processing the requests and for applicants waiting for a response.

In this context it needs to be emphatically stated that it is fundamentally important that we ensure the resiliency and operational integrity of our access to information systems. At no time has this been more crucial than in the emergent circumstances of the pandemic. The OIPC will continue to keep a vigilant watch over the system to ensure that the rights of access to information by our citizens set out in our legislation are maintained.

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ORIGINAL SIGNED BY

Michael McEvoy
Information and Privacy Commissioner
for British Columbia