

## Freedom of Information and Protection of Privacy

### Exceptions to Disclosure

Mandatory Exceptions		
Section	Exception	Basic Requirements
12	Cabinet confidences	-would reveal the substance of deliberations of Cabinet including advice, recommendations, policy considerations or draft legislation
21	Harm to the business interests of a third party	-three requirements (all must be true): 1. disclosure would reveal trade secrets, commercial, financial, labour relations, scientific information of third party 2. info was supplied in confidence 3. disclosure could reasonably be expected to cause significant harm to the third party
22	Harm to personal privacy	-disclosure would be an unreasonable invasion of an individual's personal privacy -ss. 22(4) lists disclosure of information that is not an unreasonable invasion of a third party's personal privacy including: info about a government employees functions or remuneration, disclosure reveals details of a contract to supply goods or services to the government, disclosure reveals details of a licence, permit or other discretionary benefit granted to the third party by a public body
Discretionary Exceptions		
Section	Exception	Basic Requirements
13	Policy advice, recommendations or draft regulations	-disclosure would reveal recommendations developed by or for a public body -does not include factual material, public opinion polls, final reports or audits etc.
14	Solicitor client privilege	-disclosure would reveal information subject to solicitor/client privilege -two types of privilege (1) legal professional privilege (To qualify three things must be true (i) communication is between a solicitor and client (ii) the parties intended the communication to be confidential (iii) communication entails the seeking or giving of legal advice) (2) litigation privilege (records created for the dominant purpose of preparing for, advising on, or conducting litigation)
15	Harm to Law Enforcement	-list of specific harms including: if disclosure could reasonably be expected to harm law enforcement, effectiveness of investigative techniques, endanger the life or safety of law enforcement officer or any other person, reveal identity of a confidential source of information
16	Disclosure harmful to intergovernmental relations	-disclosure could reasonably be expected to harm relations between the government of B.C. and other governments including aboriginal governments
17	Harm to Financial or Economic Interests of Public Body	-disclosure could reasonably be expected to harm the financial or economic interests of a public body -Order 00-41: "the alleged harm must not be fanciful, imaginary or contrived..."
18	Harm to conservation of heritage sites	-disclosure could reasonably be expected to result in damage to, or interfere with conservation of fossil sites, heritage sites, endangered species etc.
19	Harm to individual or public safety	-disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health or interfere with public safety
20	Information is public or will be public within 60 days	-info is available for purchase or -info will be published or released to the public within 60 days

## Important Concepts

### Mandatory v. Discretionary

**“mandatory”** = a required course of action characterized by such directives as “shall” and not “may”

**“discretionary”** = when applied to public officers means power to act in an official capacity in a manner which appears to be just and proper under the circumstances -the discretion must be exercised in good faith, and not for an improper purpose, or based on irrelevant considerations

### **“reasonably expected to”**

Order 00-37: *I have observed in a number of cases - most recently, in Order No. 00-24 - that evidence of speculative harm will not meet the reasonable expectation of harm test under s. 17(1). The feared harm must not be imaginary or contrived and, although it is not necessary to establish a certainty of harm, the quality and cogency of the evidence presented must be commensurate with a reasonable person's expectation that the disclosure could cause harm as contemplated by s. 17(1).*

## **FOI Lingo**

- **FOIPPA** – *Freedom of Information and Protection of Privacy Act* (FOIPPA can be found at [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/155\\_2012](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/155_2012))
- **The Applicant** - The individual/organization who initiated the FOI request. Can be described as business, interest group, law firm, other governments, other public body and researcher
- **Public Body** - Could be a ministry, agency, board, commission, corporation, or local public body
- **Cross Government Request(X-Gov)** - When four or more public bodies received the same FOI request
- **Conferring** - A conversation between FOI analyst and GCPE seeking views with respect to disclosure.
- **Consultation** – Documents (usually emails) forwarded to FOI office serving GCPE by another FOI office. GCPE FOI analyst then “confers” with GCPE about these. These documents will form part of the public bodies response for the applicant
- **Sever (Severing)**- When information in documents is not released (literally blanked out) due to application of the *FOIPP Act*
- **Transitory Records** - Records of temporary usefulness such as unnecessary duplicates, working materials and drafts. They may be recycled, shredded or deleted.
- **Responsive Records** – Any record which falls within the scope of an FOI Request. Can be in any form including electronic and hard copy documents as well as any other format (CD, DVD, Cassette, Record,
- **Harms Recommendations** – portions of the responsive records that could have potential harms under the FOIPP Act. We may provide harms recommendations but it is up to the FOI Analyst as to whether the act will be applied in each instance.
- **Redline** - The redline document is the final stage of the responsive records. The “Redlined” areas are to be severed under the FOIPP Act and this is to be signed off by the Approval Authority for the program area, in our case this is our Deputy Minister Ms Mentzelopoulos
- **Scope** – the scope of an FOI Request is the description of what is to be included in the responsive records package.

# **FREEDOM OF INFORMATION (FOI)**

Members of the public are able to make requests for access to any government records (with specified exceptions) under the Freedom of Information and Protection of Privacy (FOIPP) Act. All records are accessible under the FOIPP Act including emails, Outlook calendars, PIN/Blackberry messages, and communication documents such as briefing notes and Q&A's. Transitory records, including working materials and drafts, are responsive to Freedom of Information (FOI) requests if they exist at the time the FOI request is received.

## **FOI Coordinator's Role**

- provides expert advice, guidance and training to all staff on FOI policies, recognizing the sensitivity of certain FOI requests and is involved in the issues management components of GCPE's FOI process
- coordinates the collection of responsive records for Freedom of Information (FOI) requests ensuring compliance to the Freedom of Information and Protection of Privacy (FOIPPA) Act.

## **Communications Offices' Role**

- When an FOI request is received all documents within that scope must be provided to the GCPE FOI Coordinator. This includes transitory records if they exist at the time the FOI request is received;
- Communications staff will electronically submit responsive records, search details and harms recommendations to the GCPE FOI Coordinator by the stated deadline;
- Communications staff should search their LAN, Outlook, workstations and physical work space for any record pertaining to the scope of the FOI request;
- Communications staff should include details of potential harms that could result from disclosure of responsive records. If there is particular concern for the publication of the records to the public Open Information web site, this should also be communicated to the GCPE FOI Coordinator.

# **FOI - Freedom of Information and Protection of Privacy Act**

## **What is FOI?**

Members of the public are able to make requests for access to any government records (with specified exceptions) under the *Freedom of Information and Protection of Privacy (FOIPP) Act*. All records are accessible under the *FOIPP Act* including emails, Outlook calendars, PIN/Blackberry messages, and communication documents such as Issues Notes and Q&A's. Transitory records, including working materials, drafts, emails and background information are responsive to Freedom of Information (FOI) Requests if they exist at the time the FOI Request is received.

As a general rule, the records that result from an FOI Request are posted to the BC Government Open Information site (<http://www.openinfo.gov.bc.ca>).

## **Who should I call if I have a question related to FOI?**

The GCPE FOI Coordinator is Dana Hayes. She is the contact person for all GCPE FOI inquiries. She works as a liaison between GCPE and Information Access Operations (the branch of the Ministry of Citizens' Services and Open Government that handles the processing of FOI Requests).

The GCPE FOI Coordinator ensures that GCPE provides a thorough, timely search and an accurate response to FOI Requests made under the *FOIPP Act*.

The GCPE FOI Coordinator is available to GCPE staff to provide guidance and support when responding to FOI Requests.

## **Responding to an FOI Request**

- When an FOI Request is received all documents within that scope must be provided to the GCPE FOI Coordinator.
- Should transitory records exist at the time an FOI Request is received, and the records are responsive to the request, they must be submitted in response to the request.
- FOI Requests will be directed to the Communications Manager, unless other arrangements have been made with the FOI Coordinator. *For example: In the case of Advertising and Marketing, the Coordinator has been established as the initial contact person rather than the Manager.*
- Search process: The Manager (Or assigned contact) will canvass their team. Staff should search their LAN, Outlook, workstations and physical work space for any record pertaining to the scope of the FOI Request. The Manager will pass on results of search to the FOI Coordinator within 5 days of receiving the request.
- Fee estimate: If the total search and retrieval time is anticipated to exceed 3 hours and/or the total volume of records exceeds 200 pages, Communications staff should stop working on the FOI Request and inform the GCPE FOI Coordinator as a fee may be incurred by the Applicant. Further direction will be provided depending on the outcome assessed by (IAO).
- Harms Assessment: When providing records, Communications staff should include a harms assessment that details potential harms that could result from disclosure of responsive records. If there is particular concern for the publication of the records to the [Open Information site](#) this should also be communicated to the GCPE FOI Coordinator. Please ensure that you articulate the harms you believe could result from release. There is no need to refer to sections of the Act. As the Analyst reviews your harms assessment they will determine if the information may be exempted from disclosure in accordance with the Act.
- Communications staff will electronically submit responsive records, search details and harms recommendations to the GCPE FOI Coordinator by the stated deadline.
- The records and harms assessment you submit will be reviewed by the FOI Coordinator, the ADM, the IAO FOI Analyst and finally will be signed off by GCPE's DM before release and/or publication to the Open Information site.

### **Responding to an FOI Consultation**

- A GCPE FOI Consultation occurs when GCPE authored documents have been submitted to IAO through a Ministry FOI Request.
- Communications staff should review the attached GCPE authored documents and provide approval for release and/or harms recommendations.
- Please note that we are being consulted on a Ministry's responsive records package (i.e. their FOI Request) and are being asked to articulate any harms that could result from release. Please note that the Ministry ultimately decides what is responsive to their request.
- A search for records is not required during a Consultation.
- GCPE staff will have 3 days to respond to an FOI Consultation.
- The harms assessment you submit will be reviewed by the FOI Coordinator, the ADM, the IAO FOI Analyst and finally will be signed off by GCPE's DM before the results are forwarded to the Analyst responsible for the Ministry's FOI Request.

### **Best Practices for handling FOI Requests and FOI Consultations**

- When you receive an FOI Request or a FOI Consultation Request you are required to respond within three (3) days if a fee estimate is required, and five (5) days for all responsive records to be submitted to the GCPE FOI Coordinator. If you require clarification in regard to the scope of the request please ask-and the sooner the better as all answers are not that easy.
- After you have determined that you have or do not have responsive records (e-mail, MS Word etc... and or hard copy documents), assess whether a fee estimate will be required, we have three days to issue a fee estimate request to IAO so timing is very important.
- If there are no responsive records send a "NIL Records" response via e-mail to your FOI Coordinator as soon as you are able in order to expedite the processing of the request with IAO.
- Keep in mind that all communications with IAO, FOI Coordinator, Communications Shops and Executive are all kept in regard to the FOI processing and the process of an FOI has been the scope of future FOI Requests. Always assure that language is pertaining to FOI Request in Subject line and is professional in manner, these FOI Requests can be published on the Open Information Web page.
- E-mails such as TNO updates and communications that you are cc'd on for informational purposes are not required for retention so when you have read the information, DELETE the e-mail as soon as possible to reduce redundant responsive records to FOI Requests; if transitory documents exist at the time of the FOI Request they are responsive and must be submitted.
- Become familiar with the *Freedom of Information and Protection of Privacy Act* (FOIPPA) This does not mean that you have to know it backward and forward or even how to apply the act but awareness is the key
- Keep Outlook email and Calendar well organized and manage your sent and draft folders as well as they are also part of a responsive package if within the scope of a request.
- Electronic records are the preferred method as less paper is used this way but if you are sending paper records, please assure that there is a "Clean copy" with no marking and use second copy to mark up or "Post-it notes" to make your notations.
- Please assure that when you are sending your responsive records that all harms recommendations are noted on the document if sent in PDF format with "Sticky note" function as well as a notation in the e-mail as to what your harms recommendations are, there is a highlighting function in Adobe as well which is very useful for large documents with very specific severing recommendations.
- When you are submitting responsive records, assure that they are within the "Scope" of the request. IE: correct date range, topic of discussion, person named etc...