From:	Elbahir, Cindy CITZ:EX
To:	OOP FOI PREM:EX; CITZ FOI Requests CITZ:EX; FOI Coordinator FIN:EX; Allen, Jackie PREM:EX
Cc:	Frelick, Melinda CITZ:EX
Subject:	RE: Fee Estimate Guideline for the Production of Electronic Documents
Date:	September 24, 2019 11:57:58 AM
Attachments:	Fee Estimate Guideline.pdf
	FOI Request Processing Guidelines.pdf
Importance:	High

Hi everyone! Further to my email below (and attachments), FYI I am sharing part of an email I sent to the applicant following a query about fees being issued on 'sent/received' FOI requests:

> "I'm responding to your question since it isn't specific to this particular request. All requests require efforts to prepare records for disclosure. In the case of requests for all sent and received emails, employees are required to convert outlook email messages to PDF so that they can be processed using government's FOI processing software. The fees will be reduced for shorter time periods, but they will not be completely eliminated. There is still work that has to be completed to prepare the records for all time periods."

Please let me know if you have any questions. Thanks!

Cindy

From: Elbahir, Cindy CITZ:EX
Sent: September 13, 2019 11:49 AM
To: OOP FOI PREM:EX <OOP.FOI@gov.bc.ca>; CITZ FOI Requests CITZ:EX <CITZ.FOIRequests@gov.bc.ca>; FOI Coordinator FIN:EX <FOI.Coordinator@gov.bc.ca>; Allen, Jackie PREM:EX <Jackie.Allen@gov.bc.ca>; Clements, Thomas CITZ:EX <Thomas.Clements@gov.bc.ca>; Colliness, Shari D CITZ:EX <Shari.Colliness@gov.bc.ca>; Courcy, Danny CITZ:EX <Danny.Courcy@gov.bc.ca>; Doyle, Toyoko CITZ:EX <Toyoko.Doyle@gov.bc.ca>; Dyer, Brandy CITZ:EX <Brandy.Dyer@gov.bc.ca>; Frelick, Melinda CITZ:EX <Melinda.Frelick@gov.bc.ca>; Grieve, Katie CITZ:EX <Katie.Grieve@gov.bc.ca>; Kirton, Noralee CITZ:EX <Noralee.Kirton@gov.bc.ca>; Schumm, Ryan CITZ:EX <Ryan.Schumm@gov.bc.ca>; Sorboe, Rene CITZ:EX <Rene.Sorboe@gov.bc.ca>; Swift, Evan CITZ:EX <Evan.Swift@gov.bc.ca>
Subject: FW: Fee Estimate Guideline for the Production of Electronic Documents

Good morning everyone! Please see below and attached – a fee estimate guideline for the production of electronic documents. We hope you find this helpful and feel free to share it. Please let me know if you have any questions.

CE

From: Appleton, Natalie CITZ:EX
Sent: September 13, 2019 11:25 AM
To: Elbahir, Cindy CITZ:EX <Cindy.Elbahir@gov.bc.ca>; Kotchonoski, Darlene E CITZ:EX <Darlene.Kotchonoski@gov.bc.ca>; Onciul, Jamie CITZ:EX <Jamie.Onciul@gov.bc.ca>; Vanzetta, Maxine CITZ:EX <Maxine.Vanzetta@gov.bc.ca>; Prodan, Matthew CITZ:EX

<Matthew.Prodan@gov.bc.ca>; Bejcek, Ken CITZ:EX <Ken.Bejcek@gov.bc.ca>
Cc: Ghag, Kris CITZ:EX <Kris.Ghag@gov.bc.ca>; Hoskins, Chad CITZ:EX <Chad.Hoskins@gov.bc.ca>;
Kukucska, Cindy L CITZ:EX <Cindy.Kukucska@gov.bc.ca>
Subject: RE: Fee Estimate Guideline for the Production of Electronic Documents

Hi Everyone,

If your link to the additional resource is not working, please see the attachment titled, "FOI Request
Processing Guidelines".

Thank you,

Natalie Appleton | Manager Consolidated Intake and Open Information **|** Information Access
Operations **|Ph:** 250 356-9164**|** e: **Natalie.Appleton@gov.bc.ca|** m: PO Box 9569, Stn Prov Gov,
Victoria BC V8W 9K1

From: Appleton, Natalie CITZ:EX
Sent: September 13, 2019 11:04 AM
To: Elbahir, Cindy CITZ:EX <Cindy.Elbahir@gov.bc.ca>; Kotchonoski, Darlene E CITZ:EX
<Darlene.Kotchonoski@gov.bc.ca>; Onciul, Jamie CITZ:EX <Jamie.Onciul@gov.bc.ca>; Vanzetta,
Maxine CITZ:EX <Maxine.Vanzetta@gov.bc.ca>; Prodan, Matthew CITZ:EX
<Matthew.Prodan@gov.bc.ca>; Bejcek, Ken CITZ:EX <Ken.Bejcek@gov.bc.ca>
Cc: Ghag, Kris CITZ:EX <Kris.Ghag@gov.bc.ca>; Hoskins, Chad CITZ:EX <Chad.Hoskins@gov.bc.ca>;
Kukucska, Cindy L CITZ:EX <Cindy.Kukucska@gov.bc.ca>
Subject: Fee Estimate Guideline for the Production of Electronic Documents

Good Morning Managers,

Please see the attached guidance document to be shared with your teams and ministry clients. The
objective is to enable consistent fee estimates for the production of electronic documents in
response to FOI requests. Please note the table on page 3 and 4 which breaks down each category of
locating and retrieving, producing, and preparing records for an FOI request.

The FOI Request Process Guidelines are also a great resource which outlines best practices for
ministries in fulfilling their duties in response to FOI requests.

Thank you,

Natalie Appleton | Manager Consolidated Intake and Open Information **|** Information Access
Operations **|Ph:** 250 356-9164**|** e: **Natalie.Appleton@gov.bc.ca|** m: PO Box 9569, Stn Prov Gov,
Victoria BC V8W 9K1

Fee Estimate Guideline for the Production of Electronic Documents

Corporate Information and Records Management Office

September 2019

Objective:

To provide consolidated guidance to enable consistent fee estimates for the production of electronic documents in response to Freedom of Information (FOI) requests.

Background:

- Section 75 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) permits public bodies to require that an applicant pay fees for an FOI request, based on the amount of time required for a public body to locate, retrieve and produce records, prepare them for disclosure, ship and handle them and for providing copies of the records.
- Schedule 1 of the FOIPP Regulation sets out the maximum fees permitted.
- The FOIPPA Policy and Procedures Manual provides interpretative advice regarding the applicability of fees to FOI requests.
- The FOI Request Process Guidelines (attached) provide best practices that should be adopted by ministries in fulfilling their duties in response to FOI requests.
- There is a need to increase awareness of the relevant portions of the existing legislation, regulations, policies and guidelines to ensure a consistent approach by individual public bodies and to provide uniform service to applicants.

Limitations:

- This guideline applies to the collection of electronic records only.
- Fees cannot apply to:
    - the first three hours spent locating and retrieving a record;
    - time spent severing information from a record;
    - requests by an applicant for their own personal information, only for general FOI requests; or,
    - time spent assessing harms in a record.
- Fees can apply to any time spent:
    - producing the record; or,
    - preparing the record for disclosure.
- Fee estimates must be reassessed after a request is narrowed/clarified with an applicant.
- Both estimated and actual search hours should be recorded in the Call for Records form that Information Access Operations (IAO) provides, as any deviations may be payable to/by the applicant.

- **Below is a list of considerations that may apply when estimating the amount of time required to locate and retrieve, produce, and prepare records for an FOI request.**
- **If you have further questions, you should seek guidance from your public body's main FOI contact. If uncertainty still exists, IAO contacts are also available to provide guidance.**

Fee Estimate Considerations	
Locating & Retrieving Records	- The first three hours spent providing this service are free. - This is the time required to locate and retrieve responsive records from all sources and includes time spent de-duplicating records. - Tasks may include locating and retrieving responsive off-site records, extracting records from EDRMS/TRIM, or identifying emails from Outlook folders (including 'deleted', 'sent', or any relevant subfolders).
Producing Records	- There are no free hours for providing this service. - This is the time required to produce records from other sources such as time spent developing a program to produce a record from a database. - A number of factors must be considered when determining if a record should be created. Although the access provisions in FOIPPA are intended to cover existing records in the custody or control of a ministry, there are specific circumstances under which FOIPPA requires the ministry to create a new record. - Tasks may include manual time spent creating and producing records or identifying relevant sources of data/information required to produce those records.

	Fee Estimate Considerations
Preparing Records	• There are no free hours for providing this service. • This is the time required to convert records into PDF (unless an otherwise specified format has been requested), consolidate them into a single PDF document (where possible), and organize records packages (e.g. by date, department, staff, records type, etc.) • Tasks may include converting, scanning and photocopying records into a PDF, as well as ensuring completeness of responsive records.

Example Requests:

The examples below demonstrate that fees may vary based on the unique circumstances of the file (e.g. number of emails, number of pages, process used to convert emails, etc.); however, the ballpark range of preparation time required to prepare records for disclosure ranged between 100-175 pages per hour of preparation time.

- All emails – excluding attachments – sent or received by _____. Email search is limited to the individual's Outlook account. (Date Range for Record Search: From 03/01/2019 To 03/31/2019)
    - This request required a fee estimate of $60.00 based on the following criteria:
    - One hour search (provided at no charge as it's within three free hours), zero hours producing, two hours preparing, and estimated 350 pages.
- All emails - excluding attachments – sent or received by _____. (Date Range for Record Search: From 05/01/2019 To 05/07/2019)
    - This request required a fee estimate of $240.00 based on the following criteria:
    - Two hour search (provided at no charge as it's within 3 free hours), zero hour producing, eight hours preparing, estimated 800 pages.

Attachment: FOI Request Processing Guidelines
Contact: Chad Hoskins, Executive Director – 250-356-7343

FOI Request Processing Guidelines

Interactive - Version 1

BRITISH COLUMBIA

Printer Friendly Version

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Table of Contents

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Background   Application

Introduction

Purpose

> An individual working for the Government of British Columbia.

> Program area, or program area staff, for the purposes of this guide can refer to either program subject-matter experts involved in a request or the program area's designated FOI coordinator.

These guidelines are meant to assist **employees** in **program areas** across government in understanding the common operational processes used in responding to freedom of information (FOI) requests.

> Anything that is recorded or stored by graphic, electronic, mechanical or other means, including books, documents, maps, drawings, photographs, letters, vouchers, papers, emails, texts, social media posts and electronic media (e.g., video or audio recordings). This definition does not include computer programs or any other mechanisms that produce records.

Background

The Freedom of Information and Protection of Privacy Act (FOIPPA) enables the public to request and obtain copies of **records** held by B.C. government ministries or the Office of the Premier, when those records are not routinely available. The principle behind the FOI process is that information should be released unless there is a good reason not to release. Requests for information made under FOIPPA are referred to as FOI requests.

Public bodies have a legislated duty to assist anyone who submits an FOI request. FOIPPA requires public bodies to make every reasonable effort to assist applicants and to respond openly, accurately, completely and without delay.

The public's right to access records is subject to limited exceptions to disclosure. Information excepted from disclosure is removed from records released through FOI, with the exceptions noted.

> Branch within the Corporate Information and Records Management Office of the Ministry of Citizens' Services that has a lead role in ensuring government meets its legislated responsibilities with regard to FOIPPA. This includes helping citizens through the request process, working with ministries to ensure consistency and compliance with FOI requirements, and managing associated complaints/reviews.

Information Access Operations (IAO) has a lead role in ensuring government meets its legislated responsibilities with regard to FOI requests. IAO staff carry out the day-to day work of providing timely responses to FOI requests on behalf of ministries. This includes helping citizens through the request process, working with ministries to ensure consistency and compliance with FOI requirements, and managing associated complaints/reviews. IAO also publishes responses to general FOI requests and facilitates the proactive release of records to the Open Information website.

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● Background   ● Application

Introduction

> The employee within a ministry whose role it is to coordinate regularly with IAO staff.

Application

These guidelines apply to employees of public bodies served by IAO (referred to as ministries or program areas hereafter). Ministries may wish to create additional related guidance based on their specific business needs or operational contexts.

While some program areas communicate directly with an IAO counterpart, the language of these guidelines assumes program areas communicate with IAO via a central **Ministry FOI Contact**.

Legal

These guidelines do not replace or limit a ministry's legal obligations under FOIPPA.

Contact

For questions or comments regarding the applicability of these guidelines to specific files, or general questions about IAO's processes, please work directly with your Ministry FOI Contact and/or the IAO Team providing service to your ministry. If you are unsure who your Ministry FOI Contact or IAO Team contacts are, please contact:

> Information Access Operations
> Phone: 250-387-1321
> Email: FOI.Requests@gov.bc.ca

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● Stages of a Request ● Ministry's Role ● IAO's Role ● Timelines Part 1 ● Timelines Part 2

How are Requests Processed?

The 5 Stages of an FOI Request

The graphic below illustrates the 5 steps FOI requests may go through.

Intake — IAO assists applicants in refining their FOI requests so that the requests meet legislative requirement and are as clearly defined as possible.

Search — The ministry performs and documents an adequate records search and harms assessment, requests transfer(s) and/or provides information neccessary to support their fee estimation.

Review — IAO conducts consultations, takes time extensions where required and permitted, and reviews and analyzes informaton to make disclosure recommendations.

Approve — The ministry facilitates the approval of the disclosure recommendations. *Note that in some instances, ministries have delegated approval to IAO.*

Release — IAO releases the records package to the applicant and publishes to the Open Information website where appropriate.

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Stages of a Request • Ministry's Role • IAO's Role • Timelines Part 1 • Timelines Part 2

All records that fit within the scope of the applicant's description and date range and as a fair and rational personal would expect.

H Requests Processed?

The Ministry's Role in the FOI Process

While all **responsive records** are submitted to IAO for processing, ministries approve the release of all requested records prior to their disclosure to the applicant where they have not delegated that approval to IAO. This is done according to the ministry's own approval process for FOI.

Some program areas within ministries will communicate directly with an IAO counterpart, while others communicate with IAO via a central Ministry FOI Contact. IAO facilitates communication between the ministry and the applicant.

The ministry is responsible for performing and documenting an adequate records search, including locating, retrieving, producing and preparing records, as well as submitting them to IAO in the standard format. The ministry also provides a brief assessment of their views on the disclosure of the requested information and a harms assessment, as well as approval for consultations where their records or records otherwise of interest to their ministry are responsive to a request directed to another ministry.

Next: IAO's Role in FOI Process   6

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Stages of a Request ● Ministry's Role ● IAO's Role ● Timelines Part 1 ● Timelines Part 2

How are Processed?

> A request for records made by the same applicant to more than three ministries at the same time.

IAO's Role in the FOI Process

> An additional layer of analysis used by IAO at the Intake stage to establish whether an applicant is eligible to receive the personal information of a third-party.

IAO receives FOI requests made to ministries on behalf of government. This involves clarifying and interpreting FOI requests, performing **eligibility analysis**, coordinating approaches to **cross-government requests**, and issuing the **Call for Records (CFR)** form(s) to the relevant ministries or program areas so that program areas are advised that they need to perform a search.

> The form sent by IAO to relevant contacts within the ministry receiving an FOI request.

IAO facilitates communication with the applicant, including verifying authorizations or consents to disclose third-party personal information and working with the applicant to clarify or narrow the wording of their request to reduce or eliminate fee estimates. IAO coordinates transfers and facilitates consultations that are often required with other public bodies or third parties. IAO also takes time extensions where required and permitted and reviews and analyzes information to make disclosure recommendations.

Once disclosure recommendations have been made, IAO also facilitates the packaging and disclosure of the response to the applicant, as well as publication to the Open Information Catalogue where appropriate.

Next: Legislated Timelines Part 1   7

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Stages of a Request • Ministry's Role • IAO's Role • Timelines Part 1 • Timelines Part 2

How are Requests Processed?

Legislated Timelines Part 1

A response must be provided to the applicant within 30 business days after the FOI request is received. This is the legislated amount of time for completing all 5 stages of an FOI request.

Sometimes there may be grounds for an extension beyond the 30 business day timeline. IAO will facilitate any extensions to the timelines and communicate these timelines to the applicant. Requests may be extended in the following circumstances.

- ▶ The request must be clarified in order to adequately search for records. For more information see Clarifying Requests.
- ▶ The request results in a large volume of responsive records.
- ▶ The responsive records require consultations with other public bodies. For more information see Identifying Records for Consultation.
- ▶ The applicant has consented to an extension.
- ▶ The commissioner otherwise considers that it is fair and reasonable to do so.

Multiple extensions may be taken on a request. The first extension may be up to 30 additional business days and doesn't require approval from the **Office of the Information Privacy Commissioner (OIPC)**. IAO, however, must be able to justify any extensions taken. IAO must apply for further time extensions to the OIPC. If you have any questions regarding the timelines of a specific request, connect with your Ministry FOI Contact.

The body that provides independent oversight and enforcement of BC's access and privacy laws, including FOIPPA.

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Stages of a Request • Ministry's Role • IAO's Role • Timelines Part 1 • Timelines Part 2

> A request for records of a non-personal nature that potentially could be released, in whole or in part, to anyone. Examples of general records include briefing notes, contracts, etc.

Legislated Timelines Part 2

For **general requests**, when fees are assessed, and a fee is issued to the applicant, the request will be put on hold. Additional business days will not be counted towards the timeline of the request. During this time, the request may be narrowed, which may require revising fee estimates.

The request will be taken off hold when the applicant has either paid the fees due, narrowed the request until no fees are assessed, applied successfully for fees to be waived, or withdrawn their request. IAO will notify the Ministry FOI Contact when the request is either taken off hold or closed. If the request is taken off hold, the remaining business days will again be counted towards the timeline of the request. For more information see Estimating Fees.

A transfer, full or partial, must be concluded within a minimum of 20 days. For more information see Transferring Requests.

Next: Description & Interpretation   9

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● Interpreting   ● Clarifying   ◑ Connecting with Applicants

How do I Clarify and Interpret Requests?

Request Descriptions

IAO assists applicants in making their requests as clearly defined and specific as possible before the requests are sent to program areas to perform a search.

A request may be unclear for a few reasons, for instance due to the applicant's limited understanding the ministry's record holdings and/or its business practices, or when information is technical and detailed in nature. Even after IAO has worked with an applicant to refine it, the description may still result in questions from and/or be subject to possible misinterpretation by the program area.

Interpreting Requests

In some cases, a request can be interpreted in more than one way. If there are multiple reasonable ways to interpret the request, and it is not apparent through other available context what the applicant is requesting, a program area should seek further clarification from the applicant through IAO.

On occasion, the applicant may not be available, or may not wish to clarify the description. In such cases, the description should be interpreted in a way that is beneficial to the applicant. Requests must reasonably be interpreted in a way that a rational person would expect in good faith.

This is to say that requests should not be interpreted in a way that limits the records to which an applicant may be entitled. FOIPPA requires ministries to make every reasonable effort to assist applicants by responding openly, accurately, completely and without delay.

● Interpreting ● Clarifying ◑ Connecting with Applicants

How do I Clarify and Interpret Requests?

Clarifying Requests

Where it is unclear or where additional context may be required, program areas may need to clarify the request in a way that allows them to discern the intent or goal of the applicant. It is important to note that applicants are required to make a request clear enough to comply with FOIPPA but are not required to disclose their ultimate intent or goal.

A request may need clarification if it is:

▶ So broadly worded that it would return a substantially large amount of records and would warrant a significant fee.

▶ So vaguely worded that program area staff are finding it difficult to determine responsiveness of their records holdings and may be providing many non-responsive records as a result.

▶ An unclear request that covers a technically specific subject matter.

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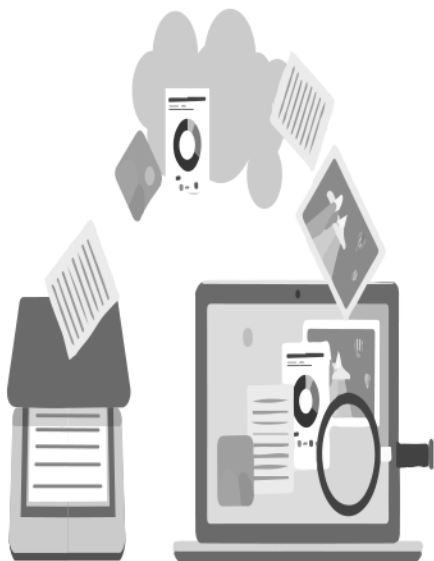# How do I Clarify and Interpret Requests?

Connecting with Applicants

IAO serves ministries by communicating directly with applicants regarding the processing of their FOI requests. If a request needs clarification or there are questions about its proper interpretation, connect with the Ministry's FOI Contact, who will liaise with IAO and ensure that requests involving multiple program areas within the ministry are co-ordinated. This may require some back and forth.

In rare circumstances, for instance where request is unclear and involves technically specific subject matter, the applicant may be connected directly with program area subject-matter experts. Where program area staff believe this may be necessary, they should ask IAO to consider whether this is the case, and:

1.   Determine the name of a person within the program area who is approved to contact the applicant directly to clarify the request. The program area contact should be someone who is positioned to understand the technical subject matter related to the nature of the applicant's information needs and who is best equipped to identify responsive records in a way that will benefit the applicant.

2.   Send the name of the approved program area contact to the Ministry FOI Contact, who will relay the information to IAO. Where it is determined to be appropriate, IAO will connect with the applicant, who will be invited to contact the subject-matter expert directly.

In some cases, it will be determined that a formal FOI request is not necessary and that the applicant's information needs can be met through other avenues. If this is the case, the applicant can be directed to those records through regular channels, such as public websites or online databases. All clarifications should be confirmed in writing with the applicant by IAO.

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● Identifying Records   ● Conducting Searches   ● Producing Records   ● Transitory Records

How do I Conduct a Search for Records?
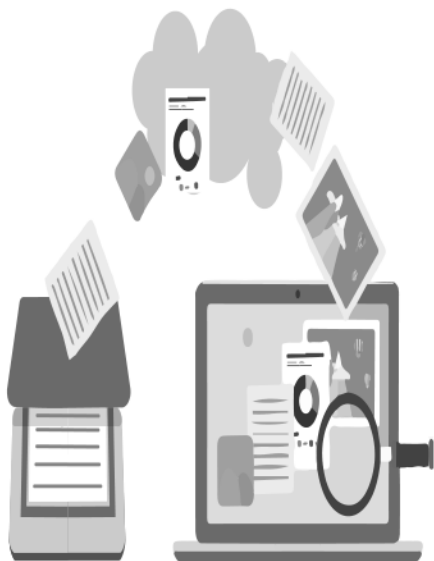
Identifying Responsive Records

Ministries are responsible for conducting an adequate search for records. The FOI request must be interpreted as a fair and rational personal would expect. All responsive records in the possession of the canvassed program area must be located, retrieved, prepared and sent to IAO via the Ministry's FOI Contact along with the CFR form containing the search summary and harms assessment, regardless of the author or sensitivity of the records in question. For more information on harms assessments see Providing a Harms Assessment.

A broadly defined request may require a large search for records and could potentially result in a large volume of responsive records. In such cases, the program area should assess search times, which will often lead to a fee estimate being issued and/or the request being narrowed. For more information see Clarifying Requests and Recording Search Time.

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Identifying Records | Conducting Searches | Producing Records | Transitory Records

How do I Conduct a Search for Records?

Conducting Searches for Responsive Records

Records searches are undertaken once a CFR form is received by the ministry. In conducting a search, staff must consider <u>all potential sources</u> for locating responsive records.

Records searches should also include the records of any positions, such as Executive Assistants, that may manage records on another's behalf.

Depending on how each office organizes its records, searches could include, but are not limited to, the following sources:

- ▶ Hardcopy files

- ▶ Files within a corporate or case management application

- ▶ CLIFF or other correspondence tracking systems

- ▶ EDRMS Content Manager or other government recordkeeping systems

- ▶ Offsite records

- ▶ Local Area Networks (LANs)

- ▶ SharePoint Sites

- ▶ Databases

- ▶ Email accounts (all folders including 'deleted' and 'sent', as well as any relevant emails you have saved as files outside of Outlook)

- ▶ Outlook calendars

- ▶ Texts and instant messages (Skype/phone)

- ▶ Staff Notebooks

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| Contents | Introduction | Process Overview | Clarify & Interpret | Conduct Search | Assess Fees | Document Search | Assess Harms | Respond to Consultations | Respond to Requests | Definitions |

- Identifying Records   - Conducting Searches   - Producing Records   - Transitory Records
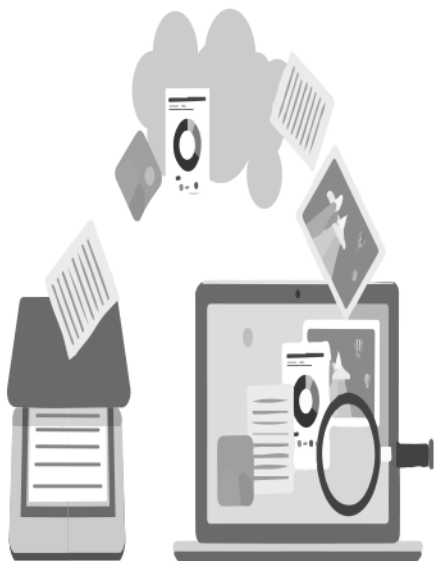
How do I Conduct a Search for Records?
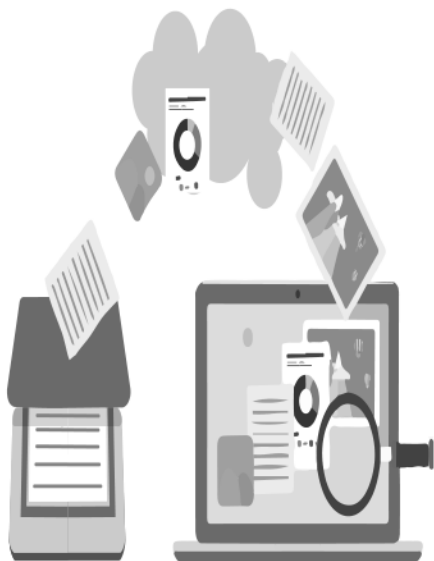
Producing Responsive Records

A number of factors must be considered when determining if a record should be created. Although the access provisions in FOIPPA are intended to cover existing records in the custody or control of a ministry, there are specific circumstances under which FOIPPA requires the ministry to create a new record. For example, if the applicant is requesting names of briefing notes created within a specified date range, it may be appropriate to create that list rather than responding that no such list exists or proposing to prepare a large records package that includes each of the briefing notes themselves. Connect with the Ministry's FOI Contact prior to creating records in response to a request.

Ministers' Offices

Records within a ministerial office relating to ministry business are subject to FOIPPA and must be searched and produced where responsive to a request. This also extends to records of a Minister of State, Parliamentary Secretary or other Member of the Legislative Assembly (MLA) where the record relates to the business and/or mandate of the ministry and not to MLA constituency matters.

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Identifying Records · Conducting Searches · Producing Records · Transitory Records

How do I Conduct a Search for Records?

Transitory Records

Transitory records are those of temporary usefulness that are only required for a limited period of time for the completion of a routine action or for preparation of a final record. For more information see the Transitory Records Guide.

Transitory records are not required for financial, legal, audit or statutory purposes, are not regularly filed in the office recordkeeping system, and do not document substantive decisions or activities. Examples include rough working notes and calculations no longer needed for drafting a document; drafts whose content (aside from formatting differences, typos, etc.) is fully duplicated in a subsequent record; and unnecessary duplicates.

Records management best practice is to promptly delete transitory records after their usefulness has expired as this helps employees to identify and file key records where they can easily be found, and helps government avoid unnecessary costs for storing and processing transitory records. However, once a ministry or program area has received an FOI request, all responsive transitory records that exist at the time the request was received must be located, retrieved, and produced for IAO to process along with other responsive records.

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● Estimating Fees Part 1 ● Estimating Fees Part 2 ● Search Time

> A request for an applicant's own personal information or for the personal information of a third party where the applicant is authorized to receive it.
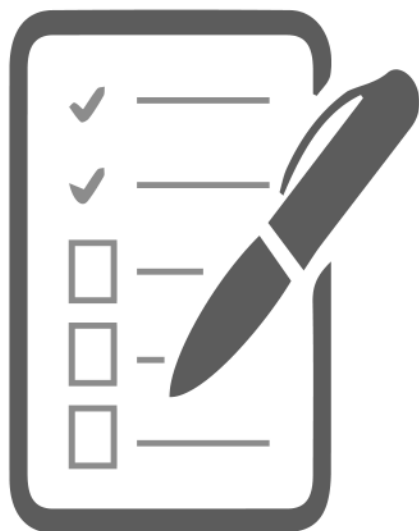
How do I Assess Fees for Requests?

Esimating Fees Part 1

There are no fees for **personal requests**. For general requests, where fees may be applicable, ministries are responsible for estimating the amount of effort (in hours) required to locate, retrieve, and prepare records, as well as anticipated page counts. These estimates are submitted to IAO prior to the actual retrieval and preparation of the responsive records. For more information see Legislated Timelines.

The first 3 hours of time spent locating and retrieving records are provided free to the applicant. The time it takes to complete the harms assessment is not included in the fee estimate. If the total locating and retrieving time is under the fee threshold, no fees can be charged, and the program area can begin retrieving responsive records.

Conversely, if there is an enormous amount of search time estimated, or the program area is not able to estimate fees due to the significant breadth of the request, contact the Ministry FOI Contact to discuss clarifications or narrowing. Where an applicant wishes to engage, IAO may be able to clarify the request or assist the applicant in narrowing their scope. For more information see Interpreting Requests.

| Contents | Introduction | Process Overview | Clarify & Interpret | Conduct Search | Assess Fees | Document Search | Assess Harms | Respond to Consultations | Respond to Requests | Definitions |

Estimating Fees Part 1   Estimating Fees Part 2   Search Time

How do I Assess Fees for Requests?

Esimating Fees Part 2

Where an applicant does not wish to engage in clarification or narrowing to reduce or eliminate a large fee, the fee will be assessed. For more information see Clarifying Requests.

Where fee estimates are issued, the applicant will receive an invoice from IAO, and the request will subsequently be put 'on-hold' until fees are resolved. With fees over $200, applicants are asked to pay 50% of the total estimated charge, with the remainder due before the request can be released.

Estimating search times and volume is not an exact science. Program areas should provide their best-informed estimate to their Ministry FOI Contact as soon as possible. Program areas should also record the actual time it takes to complete search activities so that the final fee correspondence reflects the actual amount of effort required. This should be included with the responsive records and CFR when submitting records. For more information see Organizing Records Packages.

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● Estimating Fees Part 1   ● Estimating Fees Part 2   ● Search Time

How do I Assess Fees for Requests?

The time taken to locate the responsive records in all potential sources.

The time used to retrieve the responsive records from the identified sources.

The time used to create a new record that may be produced in response to an FOI request.

The time used to convert the records to PDF.

Recording Search Time

If a fee estimate was issued for an FOI request, the program area should record the actual search times and page counts. Once records have been prepared in response to an FOI request, add information on search times to the CFR form submitted with records. Search time can be estimated to the quarter hour.

The applicant will be required to pay the actual cost whether it is higher or lower than the estimate. If it appears that the actual cost of processing the request will be different than the original fee estimate, IAO may issue a revised estimate.

Locating: This time is used to locate the responsive records in all potential sources. Tasks may include locating responsive email records, searching for responsive files, locating responsive off-site records, or reviewing box content lists. For more information see Identifying Responsive Records.

Retrieving: This is the time used to retrieve the responsive records from the identified sources. Tasks may include extracting records from EDRMS/TRIM, pulling copies of emails from Outlook, de-duplicating records, or retrieving boxes from off-site storage.

Producing: This time is used to create a new record that *may* be produced in response to the request. Tasks may include extracting data from a database or authoring a new record to respond to the request. For more information see Producing Responsive Records. There are certain cases where fees may not apply to producing a new record. Connect with the Ministry's FOI Contact prior to creating records in response to a request.

Preparation: This time is used to convert the records to PDF. Tasks may include converting, scanning and photocopying records into PDF format. For more information see Organizing Records Packages.

Next: Search Summary 19

How do I Document a Search for Records?

Search Summary

Ministries are responsible for properly documenting their search for records. This documentation will be relied upon should the adequacy of the search be challenged. For more information see Identifying Responsive Records.

The CFR form will ask for a description detailing what records were searched and who conducted the search. This description should list all potential sources of records that have been searched, as well as individuals or program areas that have been canvassed. While it is not necessary to include all search terms, any other relevant information about the search should also be included in the description. For more information see Conducting Searches for Responsive Records.

Responding with No Responsive Records

There are instances when no responsive records are located. This may be because the ministry is not responsible for the matters or issues related to the request and would therefore not hold responsive records. However, there may also be instances where it may be less obvious to the public why a ministry would not hold responsive records.

The CFR form asks the program area if it holds responsive records. When no responsive records are located, a best practice is to provide the applicant with accurate and complete context for the reason(s) why records do not exist. The information sent back to IAO on the CFR form should include:

▶ Details of the search efforts

▶ Any reason(s) why the ministry would not hold responsive records

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● Search Summary   ● Transfering Requests

How do I Document a Search for Records?

Transfering Requests

Ministries have 20 business days to complete transfers of FOI requests. To facilitate this, the CFR asks if the program area is aware of the existence of any other records in another ministry, or other public body, that are expected to be responsive to the request.

Full Transfer

If the ministry does not have records but has reason to believe there are responsive records in another ministry or public body, notify the Ministry FOI Contact as the file will need to be transferred as soon as possible, otherwise proceed to Respond with No Responsive Records.

Partial Transfer

If the ministry does have records and has reason to believe there are also responsive records in another ministry or public body, notify the Ministry FOI Contact as the file will need to be transferred as soon as possible, otherwise proceed to conducting a search. For more information see Identifying Responsive Records.

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Assessing Harms • Exceptions Part 1 • Exceptions Part 2 • Exceptions Part 3 • Harms Assessment • Identifying Consults

How do I Assess Harms to Disclosure?

Assessing Harms

FOIPPA establishes the rights of the public to access government records; however, it also limits the disclosure of information based on certain types of information that may be harmful if released. The main purpose of the harms assessment is to provide context about information that is particularly sensitive or would be harmful to release.

The principle behind the FOI process is that information should be released unless there is a good reason not to release. The harms assessment should document the rationale for why certain information may be considered harmful if released. A "harm" is a general explanation of why certain information may not be releasable and should include more context than merely identifying a potentially applicable FOIPPA exception.

Applying FOIPPA exceptions can be complex as this relies on in-depth knowledge of FOIPPA and its associated regulations and policies, previous OIPC orders, previous court decisions, other legislation, regulations, and policies, as well as the specific context of the information and, where necessary, input from third parties. It is the IAO Analyst's role to interpret and recommend the application of these exceptions.

While the content of the records is often quite informative, input from program areas is vital to IAO building a proper understanding of the nature and context of the information contained within responsive records. The harms assessment allows IAO Analysts to recommend the application of appropriate redactions that are defensible under FOIPPA.

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How do I Assess Harms to Disclosure?

Understanding Exceptions Part 1

The list below can be used as a quick reference for brief descriptions of FOIPPA exceptions. Information within a record may contain multiple harms. For a more detailed guide to FOIPPA exceptions, see the FOIPPA Policy & Procedures Manual.

Cabinet confidences: Information that would reveal the substance of deliberations of, or any advice or recommendations submitted or prepared for, the Executive Council or any of its committees.
▶ Does not include background explanations or analysis if the decision is either already public or implemented, or over 5 years have passed since the decision was considered.

Policy advice or recommendations: Information that would reveal advice or recommendations developed by or for a public body or a minister.
▶ Intended to allow open and frank discussion of policy issues which would not occur if the deliberate process were subject to excessive scrutiny.
▶ Does not apply to information in a record over 10 years old.

Legal advice: Information that is subject to solicitor-client and litigation privilege.
▶ Applies to client-generated documents and opinions. May be as formal as a communication between lawyer and client or as simple as notes on the file made to assist the lawyer in litigation.

Disclosure harmful to law enforcement: Information that could reasonably be expected to harm a law enforcement matter.
▶ Not limited to police forces. Includes investigations and proceedings that lead or could lead to a penalty being imposed to enforce compliance or remedy non-compliance with standards, duties, and responsibilities under statutes and regulations.

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How do I Assess Harms to Disclosure?

Understanding Exceptions Part 2

Disclosure harmful to intergovernmental relations or negotiations: Information that could harm the conduct of relations between BC and another government, including a First Nation.
- ▶ Includes positions, options, instructions and criteria to be used in negotiations.
- ▶ A fear that disclosure would hinder, impede, or minimally interfere with the conduct of intergovernmental relations or negotiations does not satisfy this exception.

Disclosure harmful to the financial or economic interests of a public body: Information could harm the financial, competitive, economic or negotiating interests of a public body.
- ▶ Includes plans, programs, and negotiations that have not yet been implemented or made public.
- ▶ The harms must not be fanciful, imaginary or contrived, but rather based on reason.

Disclosure harmful to the conservation of heritage sites, etc.: Information disclosure could result in damage to or interfere with the conservation of fossil sites, natural sites, valuable anthropological or heritage sites, or endangered, threatened, vulnerable or rare living resources.
- ▶ Includes the exact location of bear dens, First Nation cultural sites and endangered species habitats.

Disclosure harmful to individual or public safety: Information which could threaten a person's safety, mental or physical health, or interfere with public safety.
- ▶ There should be grounds to judge that a clear threat is present.

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How do I Assess Harms to Disclosure?

Understanding Exceptio...

> In relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

Disclosure harmful to business interests of a third party: Valuable financial, commercial or scientific information about a **third party's** business that was supplied to the government in confidence. Application of this exception requires more than an assertion—there must be evidence of a "significant" potential harm to business interests. <u>All three</u> of the following must be true:

▶ The information contains trade secrets, technical, commercial, financial, or labour relations information; and

▶ The information was supplied to government "in confidence" (not simply marked by the third party as confidential); and

▶ Its disclosure could significantly harm the business interests of a third party.

Disclosure harmful to personal privacy: Personal information disclosed in response to an FOI request that would constitute an unreasonable invasion of a third party's personal privacy.

▶ Does not include business contact information (i.e., the names and contact information of BC government staff or those of third parties communicating with government in a professional capacity).

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● Assessing Harms ● Exceptions Part 1 ● Exceptions Part 2 ● Exceptions Part 3 ● Harms Assessment ● Identifying Consults

How do I Assess Harms to Disclosure?

Providing a Harms Assessment

A detailed understanding of FOIPPA is not required to provide a useful harms assessment. While simply identifying a FOIPPA exception that may apply to the information may be appropriate in some cases where the context of the harms is evident from the actual records themselves, in other cases, harms can be less clear, especially when complex or technically specific subject matter is involved.

Assessing harms should involve providing a background of why or how the information in a record could be harmful if disclosed. Harms can be documented in many ways depending on the complexity of the harms within the records.

The CFR form, which is attached to the records package that is returned to IAO, includes a section for general explanations of the potential harms present along with any relevant page numbers in the records package.

A copy of the records package that has been modified to identify harms to disclosure.

In some cases, a **marked copy** is useful to provide the appropriate level of detail, but this is not required. Marking records with line-by-line "requested" severing is also not required. Please note that if you provide IAO with a marked-up version of the records, a clean copy of the same records will also be required.

To ensure consistency of severing, IAO Analysts search for previously released FOI requests to compare severing. If you know that the records being submitted to IAO have been previously processed in response to an earlier FOI request, noting the file number is useful.

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How do I Assess Harms to Disclosure?

Identifying Records for Consultation

Responsive records will often include records that, although in the program area's custody or control, were not authored by the ministry. A common occurrence would be email threads with communications between two or more ministries. In some cases, the content of a portion of the records may be of interest to another ministry or public body where that organization is the lead or otherwise heavily involved in a project. An example of this would be a briefing note that contains another ministry's detailed recommendations. Where it is not clear to the program area whether there is a harm in releasing that information, a consultation should be considered.

While all responsive records captured by the FOI request must be included in the records package and should be assessed for harms, IAO will facilitate consultations to seek additional context and/or recommendations for disclosure from the appropriate third parties where warranted or required. Information regarding the records a program area believes may warrant consultation can be included in the CFR form. While helpful, this information is not necessary for IAO to identify and conduct consultations.

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How do I Respond to Consultations by Other Public Bodies?

What is a Consultation?

When a ministry receives a consultation request from another public body, that public body is seeking the ministry's views with respect to disclosure of the records responsive to their FOI request. IAO will forward the specific records identified for consultation, provide the description of the request received by the other public body (noting the applicant type if available), and provide a date by which the consultation is due.

Sometimes, records responsive to an FOI request may be of interest to a ministry or public body that did not receive the request. Where it is not clear to the program area who received the request whether there is a harm in releasing information, other ministries or public bodies may be consulted. For more information Identifying Records for Consultation.

How do I Respond to Consultations by Other Public Bodies?

Responding to Consultations

This consultation process is similar to the FOI request process, although no additional records need to be searched or provided. The records sent for consultation should be reviewed to identify potential harms to their disclosure (i.e. a process substantially similar to the harms assessment process when you receive a request for records). On occasion, records sent for consultation may be pre-marked with red boxes indicating disclosure recommendations that have been provided by the public body that received the initial request. For more information see Assessing Harms.

Once the records have been assessed for harms, connect with your Ministry FOI Contact. As consultations are not a legislated requirement, the ministries' delegation instrument does not address what position has the authority to approve a consultation response. In practice, this varies across ministries. IAO will send a **redlined copy** of the consultation records back to the public body who received the initial request to seek that public body's approval for disclosure.
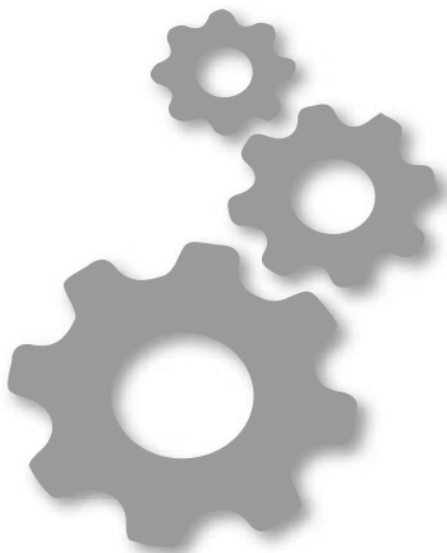
> A copy of the records package that has been modified to identify harms to disclosure.

● Organizing Records   ● Approving Requests

How do I Respond to Records?

All responsive records collected in response to an FOI request.

Organizing Records Packages

Once all responsive records have been gathered they must be sent to IAO via the Ministry FOI Contact as soon as possible along with the harms assessment and the completed CFR form. For more information see Search Summary and Providing a Harms Assessment.

Records packages can be organized by any means; however, it is helpful when they are organized in some logical manner where possible, such as by date, department, staff, records type, etc. The organization of records packages will often depend on the nature, amount and/or complexity of the information requested.

Unless there are existing alternative arrangements made with the IAO team that processes the ministry's requests, records must be converted to PDF format without security controls enabled. Reasonable efforts to de-duplicate the records are greatly appreciated as this saves time at IAO and for the delegated head when considering the disclosure recommendations. It is preferred that the records package is combined into a single PDF and sent to IAO via IAO's shared drive (where ministries have opted to use this service) or alternatively via email wherever possible.

In some circumstances, it may be appropriate to submit records in their original file format. For example, Excel documents that do not contain harms can be submitted in their original file format, so that they maintain full functionality.

Next: Approving Disclosure   30

Organizing Records   Approving Requests

How do I Respond to Requests for Records?

Approving the Disclosure of Records

IAO analysts will review the responsive records and consider all relevant factors prior to making disclosure recommendations. The recommendations are approved by either a ministry approver or IAO before a response is provided to the applicant. The Ministry facilitates the approval of all general requests.

### Ministry Facilitates Approval

> A form of briefing specific to FOI approvals.

Where the ministry delegates a ministry approver to facilitate approval of the disclosure recommendations, IAO will complete a **sign-off form**. This form will include recommendations for disclosure as well as a publication recommendation where appropriate. This sign-off form is sent to the appropriate Ministry FOI Contact along with a redlined copy of the records.

IAO Facilitates Approval

Where the ministry's delegation requires IAO to be the approver, FOI packages are not sent back to the ministry prior to disclosure.

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● A-L   ● M-P   ● R-Z
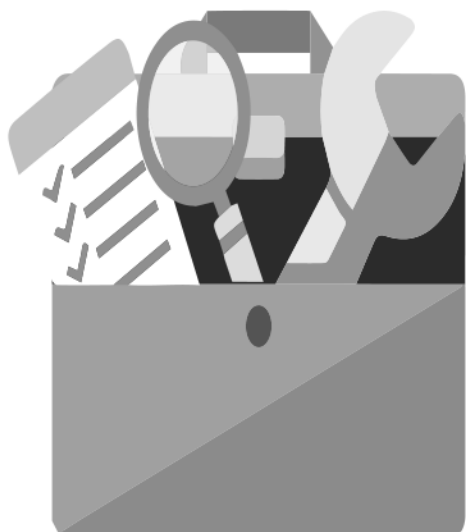
Definitions

Definitions (A-L)

Call for Records (CFR): The form sent by IAO to relevant contacts within the ministry receiving an FOI request.

Cross-Government Request: A request for records made by the same applicant to more than three ministries at the same time.

Eligibility Analysis: An additional layer of analysis used by IAO at the Intake stage to establish whether an applicant is eligible to receive the personal information of a third-party.

Employee: An individual working for the Government of British Columbia.

General Request: A request for records of a non-personal nature that potentially could be released, in whole or in part, to anyone. Examples of general records include briefing notes, contracts, etc.

Information Access Operations (IAO): Branch within the Corporate Information and Records Management Office of the Ministry of Citizens' Services that has a lead role in ensuring government meets its legislated responsibilities with regard to FOIPPA. This includes helping citizens through the request process, working with ministries to ensure consistency and compliance with FOI requirements, and managing associated complaints/reviews.

Locating Records: The time taken to locate the responsive records in all potential sources.

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Definitions

Definitions (M-P)

Marked Copy: A copy of the records package that has been modified to identify harms to disclosure.

Ministry FOI Contact: The employee within a ministry whose role it is to coordinate regularly with IAO staff.

Office of the Information and Privacy Commissioner (OIPC): The body that provides independent oversight and enforcement of BC's access and privacy laws, including FOIPPA.
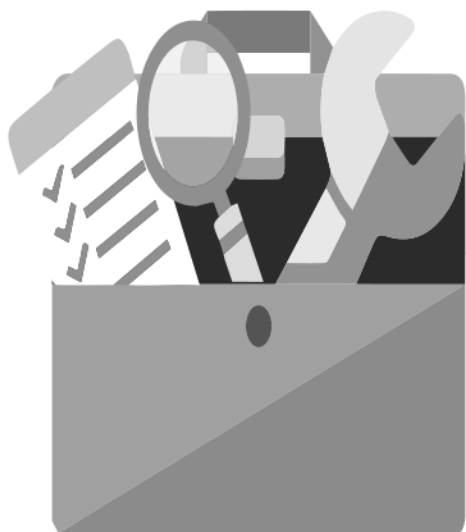
Personal Request: A request for an applicant's own personal information or for the personal information of a third party where the applicant is authorized to receive it.

Preparing Records: The time used to convert the records to PDF.

Producing Records: The time used to create a new record that may be produced in response to an FOI request.

Program area or program area staff: Program area, or program area staff, for the purposes of this guide can refer to either program subject-matter experts involved in a request or the program area's designated FOI coordinator.

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● A-L   ● M-P   ● R-Z

Definitions

Definitions (R-Z)

Record: Anything that is recorded or stored by graphic, electronic, mechanical or other means, including books, documents, maps, drawings, photographs, letters, vouchers, papers, emails, texts, social media posts and electronic media (e.g., video or audio recordings). This definition does not include computer programs or any other mechanisms that produce records.

Records Package: All responsive records collected in response to an FOI request.

Redlined Copy: A copy of the records with red boxes added to indicate proposed redacting. Responsive Records: All records that fit within the scope of the applicant's description and date range and as a fair and rational personal would expect.

Retrieving Records: The time used to retrieve the responsive records from the identified sources.

Sign-off Form: A form of briefing specific to FOI approvals.

Third Party: In relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

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