

INFORMATION NOTE

Advice to Minister Beare

Date: April 1, 2021

CLIFF#: 114882

ISSUE: Proactive Disclosure Compliance

BACKGROUND:

Proactive Disclosure is the proactive or routine release of government information to the public without the need for a formal Freedom of Information request. A significant component of improving access to government information in a consistent manner is increasing the amount of information being made available through proactive disclosure.

Section 71.1 of the Freedom of Information and Protection of Privacy Act (FOIPPA) allows the minister responsible for the Act to establish categories of records that ministries must disclose and to issue directions that detail those disclosures.

DISCUSSION:

Since 2011, government has been proactively disclosing records categories such as Minister and Deputy Minister travel expense summaries and records released in response to FOI requests. Records are posted to the Open Information website.

In 2016, several new categories were announced including the publication of Ministers' calendars, Deputy Ministers' calendars, and Ministers' receipted travel expenses. In December 2020, government's Open Information program was expanded to include the corporate transition binder, ministry transition binders and ministry estimates notes. Overall, government has now established 13 proactive disclosure categories, resulting in over 5,000 information releases per year.

Establishing proactive disclosure categories under FOIPPA is intended to relieve some strain on the FOI system by making commonly requested records available by default, eliminating the need to individually request and process these types of records and setting consistent timelines for their disclosure. Established categories also provide an opportunity to release information in a consistent way across government.

Unless specifically exempted in the Ministerial Directive, records must be produced and provided to Information Access Operations in the Corporate Information and Records Management Office within the timeframes outlined in each directive. Further, government is required to comply with the legislated due dates outlined in each directive. Compliance with the ministerial directives is also tracked by Information Access Operations, who follow up directly with ministries to ensure that timelines are met.

While formal penalties for non-compliance are not established, compliance with the directives confirms government's commitment to openness and transparency. Proactively releasing information further supports the Minister's mandate points relating to timely access to information and providing greater public accountability.

SUMMARY:

Categories of records identified for Proactive Disclosure through Ministerial Directive increase the amount of information available to the public, promoting transparency and government accountability. Records must be disclosed in the manner and by the timelines set out in each directive.

Attachment(s): N/A

Contact: Chad Hoskins, 250-356-7343

DECISION NOTE

Advice to Minister Beare

Date: September 24, 2021

CLIFF#: 115782

ISSUE: Freedom of Information (FOI) Application Fee

BACKGROUND:

s.12; s.13

In FY2020/21, one FOI requester was responsible for 56% of all general FOI requests. s.13
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In most cases, once a fee estimate has been provided to an applicant, the request is abandoned - suggesting the request was not genuinely required. In the past, only 15% of general requests proceeded after a fee estimate was provided.

s.12; s.13

DISCUSSION:

The fee is not intended to be a barrier to access and will be set within the range of similar fees charged by other Canadian jurisdictions (i.e., \$5 – \$25, see Appendix A). As a result, the fee will be set at an amount that is not intended to recover the full cost—or even a significant portion of the costs—of operating an access to information program.

The fee would be charged for each request for each public body. For example, if the same request is submitted 20 ministries, 20 application fees will be charged (i.e. 20 x \$15 = \$300). As such, the new proposed application fee is s.13

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s.12; s.13

OPTIONS:

Option 1: s.12; s.13

s.12; s.13

Option 2: s.12; s.13

s.12; s.13

Option 3: s.12; s.13

s.12; s.13

RECOMMENDATION: s.12; s.13

APPROVED

~~NOT APPROVED~~

OPTION 2



Lisa Beare
Minister

2021-10-01

Date

Attachment(s): Appendix A – FOI Application Fees in Other Canadian Jurisdictions
Appendix B – Fee Amount Scenarios and Projections

Contact: Kerry Pridmore, 778 698-1591

Appendix A: FOI Application Fees in Other Canadian Jurisdictions

Jurisdiction	Application Fee
British Columbia (Current)	No Fee
British Columbia (Proposed)	To be determined in future regulation
Alberta	\$25 for first request / \$50 per continuing request
Saskatchewan	\$20 per requests to local governments
Manitoba	No Fee
Ontario	\$5 per request
Quebec	No Fee
Nova Scotia	\$5 per request
New Brunswick	No Fee
Prince Edward Island	\$5 per request
Newfoundland and Labrador	No Fee
Yukon	No Fee
Northwest Territories	No Fee
Nunavut	\$25 per request
Canada	\$5 per request

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Withheld pursuant to/removed as

s.12 ; s.13

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE Ministry: Citizens' Services Date: June 7, 2021 Minister Responsible: Lisa Beare	FOI time extensions
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ADVICE AND RECOMMENDED RESPONSE:

Problem:

- **British Columbians expect and deserve improvements to the Province's FOI system.**

Solution:

- **While FOI requests continue to grow in number, size and complexity, we are taking steps to improve response times.**
- **In some cases, it is necessary to use a time extension in order to properly respond to FOI requests.**
 - **This can occur when FOI requests are too vaguely worded, capture a large volume of records or require consultation with third parties.**
 - **This can also occur with the applicant's consent or where the Commissioner feels it is fair and reasonable to approve an extension.**

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- **B.C. is exploring new technologies to better handle large volumes of records. We have also expanded proactive disclosure to reduce the need for some common FOI requests.**

Benefit:

- **In recent years there has been a considerable improvement in response times, despite an approximate 40% increase in request volumes.**
- **Despite challenges during COVID-19, we have been providing excellent service to citizens, responding to 85% of requests on-time.**

- In the last three fiscal years, 2018/19 to 2020/21, the Opposition has submitted approximately 14,600 requests (68% of all general requests) at an approximate cost of \$44 million to process.
- Of the nearly 11,000 requests responded to last fiscal year, the majority did not require a time extension of any kind.

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- The Office of the Information and Privacy Commissioner's (OIPC) recommendation on time extensions is being carefully reviewed alongside the other suggestions in the Sept. 2020 timeliness report.
- Legislation permits the Province to request time extensions on FOI requests as necessary to help ensure the proper functioning of the system.

KEY FACTS:

The Office of the Information and Privacy Commissioner released a report on Sept. 2, 2020 examining the timeliness of government's FOI responses. The report covered the 2017/18, 2018/19 and 2019/20 fiscal years.

The first recommendation in the report was to 'monitor reliance on time extensions taken with applicants' consent and have a plan in place in the event of a downward trend in applicants providing this consent.'

Additionally, the commissioner commented that "between April 1, 2017 and March 31, 2020, government took it upon themselves, in over 4,000 cases, to extend the response time for an access request without any legal right to do so."

Media Interest: Steady interest in FOI from media as they are stakeholders. Latest media story is from June 6, 2021 from Rob Shaw for The Orca: <https://theorca.ca/resident-pod/on-access-to-information-and-government-foibles/>

Communications:	Ben Ingram	778 698-5379
Program:	Kerry Pridmore	778 698-1591

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry of Citizens' Services
Date: Sept. 20, 2021
Minister Responsible: Lisa Beare

FOI no-records responses

ADVICE AND RECOMMENDED RESPONSE:

- One of my ministry's top priorities is improving the FOI system so people in B.C. have timely access to the information that they need.
- A no-records response may occur if the requested files do not exist or are not in the custody of the public body that received the FOI.
- Dedicated FOI staff work directly with people making requests to ensure they are worded effectively and directed to the ministry or public body most likely to have records.
- Applicants have the right to request the independent Office of the Information and Privacy Commissioner (OIPC) review an FOI decision.

If asked about access denied responses:

- The legislation contains exceptions that prohibit government from releasing certain types of records, such as files with peoples' personal information or sensitive details about law enforcement.
- In some cases, an entire record must be withheld due to potentially harmful information. (For example, documents containing proprietary details about a business.)

KEY FACTS:

Public sector staff are required to perform a reasonable and comprehensive search for and provide responsive records whenever they receive a Freedom of Information (FOI) request. A no-records response is issued when no documents are found to be in the custody of the ministry.

Applicants generally must describe what they are looking for and direct their requests to a specific ministry or public body. Staff at Information Access Operations, which oversees the Province's FOI program, work with applicants to ensure their requests are worded in a way that targets the records they seek and when possible, avoids extra fees. This is part of the 'duty to assist' FOI applicants.

Some applicants may also receive an 'access denied' response when the records they have requested must be withheld in their entirety. An example would be records of a decision that is still under cabinet consideration, or files that contain other people's personal information.

Media Interest: Media will sometimes post to social media copies of no-records responses they have received. Similarly, members of the opposition may bring up these responses in Question Period during discussions on transparency and accountability.

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Program:	Chad Hoskins	250 356-7343
	Kris Ghag	250 387-9801

ADVICE TO MINISTER

**CONFIDENTIAL
DRAFT ISSUES NOTE**

Ministry of Citizens' Services
Date: Sept. 28, 2021
Minister Responsible: Lisa Beare

Freedom of Information

ADVICE AND RECOMMENDED RESPONSE:

- My ministry is committed to improving the FOI system so people in B.C. have timely access to information that they need.
- We've been working to help people get their records faster, by:
 - Improving response times despite a 41% increase in request volume over two (fiscal) years and an all-time high of over 13,000 requests received in 2019/20.
 - Improving our on-time response rate — now more than 85%, a significant improvement from the 80% or below of previous years.
- I'm looking forward to seeing these response rate numbers continue to rise as we improve the FOI system for the people of B.C.
- In the current fiscal year, as of September 28, 2021, FOI on-time rate is 81%.

KEY FACTS:

Freedom of Information in B.C. is administered by Information Access Operations (IAO). The following table shows the number of requests received each fiscal, the on-time response rate (%) and year-over-year change in volume:

Fiscal	# FOIs closed	On-time rate (%)	Change (total and %)
2017/18	9,364	90%	-493 (-5%)
2018/19	11,790	89%	2,426 (+26%)
2019/20	12,899	83%*	1,109 (+9%)
2020/21	10,841**	85%	-2,058 (-16%)

*Includes 615 political party requests that came back to government overdue after OIPC denied request to ignore based on s.43 of FOIPPA

**Numbers change daily

Political Party Requests

Fiscal	# FOIs received	Cost to government	# FOIs closed	On-time rate (%)
2016/17	1,279	\$3.9M	1,588	77%
2019/20	5,837	\$17.5M	5,948	82%
2020/21	4,033	\$12.1M	4,773	84%
2021/22 YTD	1,125*	\$3.4M*	1,164*	74%*

*Numbers change daily

The current annual budget for IAO is about \$12 million. IAO expenditures reflect only a portion of the total expense government incurs for the provision of FOI services.

IAO is part of the Corporate Information and Records Management Office. CIRMO's budget for 2020/21 was \$22.597M. The budget for 2021/22 is \$24.781M.

Media Interest: s.13

s.13

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