British Columbia | Ministry of Housing

Freedom of Information Process

Collection, Harms, Consultations, and More

Updated November 2023

What We're Covering Today

Ministry of Housing

- Legislative obligation
- Records management practices
- Timelines
- Fee estimates
- Call for records
- Quality control
- Harms assessments
- Questions

Legislative Obligation

- What is our obligation?

- Any person or organization can submit a request:
  "to the public body that the applicant believes has custody or control of the record" when the request *"provides enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the record sought".*

- <u>Public servants are required to:</u>
  "all make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely".

What Can Be Requested?

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- Anybody can request records the public body has possession of, AND:
  - Which were created in the course of an employee's duties, and the content of which relates to the public body's mandate and functions.
  - Are integrated with other records the public body holds;
  - Over which the public body has any rights or responsibilities, including respecting their use, disclosure, or destruction.

- In short, mostly any record created or received in your work.
- Keep your personal emails/messages outside of government communication systems
- Don't write something unprofessional that could be released

Records Management

- Good records management allows for easy FOI handling
  - Confidence in record storage locations
  - Fewer people recruited to help
  - Faster processing

- This can include:
  - Deleting transitory emails and files
  - Sorting Outlook folders effectively by topic
  - Confirming that briefing notes and more are CLIFFed and together
  - Compartmentalize subjects/issues

Timelines

- Upon receiving a request, the Ministry is given a strict "**legislated due date"** to meet.
- We also work under a set of earlier due dates for the fee estimate, collection, harms, and sign off.
  - *See the subject line for the current due date*
- It is important that work on requests is started early.
- Time must be built in to allow for the other links in this chain to complete their work on time.
- The applicant must receive complete records within 30 days.

- Considerations:
  - A delayed search will force executive to rush the next steps.
  - If we fail to meet the legislated due date, the Office of the Information and Privacy Commissioner will investigate for negligence.

Fee Estimates

- Before a search can start, we need to consider a fee estimate.
- Files qualify for a fee estimate if:
  - Search and collection will take over 3 hours
  - Estimated page count will exceed 200 pages
- Do not initiate a collection until requested.
- Perform a cursory search to inform your estimate
- This request is on pause until the applicant pays a fee, narrows the scope, or abandons the request.

Receiving A Fee Estimate Request

- Receive a fee estimate email from the FOI coordinator
  - Via HOUS.FOI@gov.bc.ca to a division FOI contact
- Read and consider the scope and range.
  - No records outside the date range should be considered
  - No records not explicitly responsive should be included
- Consider where your area's records might be
- Consider which other areas may hold records
- Forward as needed within your division/branch
  - Clarify that no collection is needed at this time

Interpretation Consistency

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- Uncertain of scope interpretation? Ask the FOI coordinator
- Refrain from making uncertain assumptions
- All branches should share the same interpretation
- The interpretation must be narrow and exact
- Only provide exactly what is asked for — nothing more, nothing less, and nothing different
- Providing unresponsive records causes delays and extra work, burdening the harms assessment and necessitating their later removal

Fee Response

- Branch compiles internal fee count
- Division compiles each branch count into one
- Division contacts write in estimate into email response
  - Pages + hours
- Tick relevant boxes in the email, fill in slots
- Send response back to HOUS.FOI@gov.bc.ca
- If no records are expected in the division, ADM approval will be requested in the next stage.

- No more action needed by staff at this time. Do not collect records, as the request may change or be cancelled

Fee Estimate Email Example

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New FOI Request – Fee Estimate	
[FOI REQUEST #] HSG-2023-000000	Due to Catherine Palendat: Month X, 2023
FOI Request Details	
Applicant Type:	
Search Summary	

Does your area hold responsive records?

☐ YES – If yes, complete fee estimate information below

☐ NO - ☐ ADM Approved NRR – If applicable, provide an explanation that can be given to the applicant for why

Do you know of any program area/organization/ministry that may have responsive records?

☐ YES ☐ NO

If yes, specify below:

Do you know if any of the request is publicly available? If yes, please provide specific location/s?

☐ YES ☐ NO

If yes, specify below:

Please indicate locations included in the cursory non-collection search for the fee estimate:

☐ Email/Outlook (including deleted and sent folders)
☐ Microsoft Teams
☐ LAN, shared drives, SharePoint
☐ Databases
☐ Records management systems (e.g., EDRMS)
☐ On-site physical record lists
☐ Off-site physical record lists
☐ CLIFF

CLIFF search parameters:

☐ Other

Other search areas:

Fee Estimate (to be completed when there are responsive records)		
Locating/Retrieving: • This is the time required to locate and retrieve responsive records from all sources. • Tasks may include locating and retrieving responsive from sources such as CLIFF, EDRMS and off-sites or identifying emails from Outlook folders.		Hours
Producing - only applies where you are creating records/databases from other sources • Identifying relevant sources of data/information required to produce the records/database This is time required to produce/create records from other sources such as time spent developing a program to produce a record from a database or to create an Excel spreadsheet to respond to request. • Tasks may include manual time spent creating and producing records or identifying relevant sources of data/information required to produce those records • There are no free hours for this service.		
Electronic records – Volume • Example: emails (and attachments), Word Docs, Excel sheets, PDFs, photos, etc.		Pages
Hardcopy records – Volume • Average file folder = 1" and holds approx. 200 pages (single-sided)		

*******DO NOT BEGIN COLLECTING RECORDS UNTIL ADVISED*******

Fee estimates will be compiled for all divisions/branches involved in the request.

Based on the cumulative total across divisions, if any of the following bullets apply, a fee estimate may be issued to the applicant:

- *The search and retrieval time are anticipated to exceed 3 hours;*
- *The volume of records (digital or physical) is anticipated to exceed 200 pages;*
- *Preparation (production of new records) time can reasonably be expected to exceed 15 minutes or more.*

Receiving a Call for Records

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- Once the fee has been paid or it is determined no fee will be charged, it is time to collect records
- The FOI coordinator will alert division contacts
- Divisions forward email to branch contacts
- Branches forward email to appropriate staff
  - Staff who provided the fee estimate previously
  - Any staff who may possess records or have information
- If useful, clarify scope description/range to ensure narrow search
- LAN link included in the email as the records depository

- Emphasize the provided due date

Quality Control

- When collecting records, actively apply a quality control filter
- HOUS executive and Information Access Operations will be reviewing each and every record. Excess unresponsive records are detrimental to the process
- Precision is key. Remember the date range provided
- <u>Please do not provide anything outside the date range or outside the narrow scope interpretation.</u>
- Do not collect every record you can find that simply contains a key word or phrase
- Be sure to look at and filter the records before providing them
- Unsure of responsiveness? Check with the FOI coordinator

Responsiveness of Records

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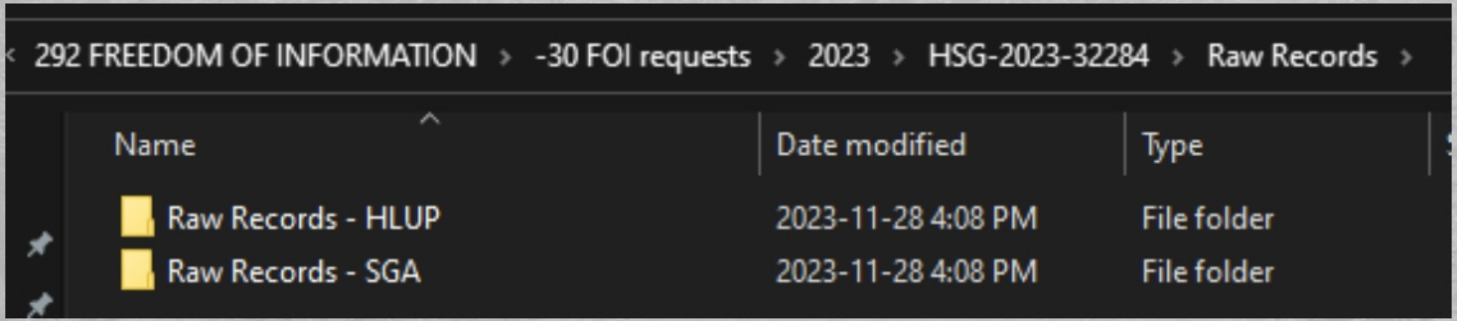
- If an email thread contains one part that is responsive while the rest is not, the entire thread is provided
- If a briefing note about X includes a full section on data for Y, it will be responsive to a request seeking data on Y
- Records cannot be withheld from collection because they are harmful or sensitive
- For a request seeking "emails about Z", staff must search for sent, received, and deleted emails

Record Response

- Branch staff add records to subfolders in the LAN folder
- Branches notify the division when collections are complete
- Division contact replies to the CFR email stating records are ready

- No harms assessment is needed at this time



De-duplication

- Magic happens!
- The compilation of raw records comes back processed
- Duplicate files/emails are removed
- The combined PDF is sorted appropriately, and email attachments are added adjacent to their parent email

- Media files and spreadsheets are not PDF’d
  - Please review them separately in the harms stage

Harms Assessment Stage

- The FOI coordinator sends division contacts a new email
- PDF records are ready for review in the shared LAN
  - Each division has their own PDF to review and mark
  - Each division's PDF contains only what the division provided
- Program areas review the PDF and add highlights/comments to indicates specific harms and thoughts
  - If something seems harmful but isn't, please add a comment
  - If something is harmful, please comment why
  - The more clarification written, the better for everybody
- Branch lead (ED or director) approves assessment
  - [Branch approver and contact list found here on intranet]
- Email the FOI coordinator to state when the assessment is complete, filling in the small table in the email.

What Can’t be Redacted

- Unless the *Freedom of Information and Protection of Privacy Act* explicitly permits withholding information, it will be released
  - We cannot sever information simply for being unflattering
  - We cannot withhold records we didn’t *mean* to keep or make
- We cannot redact portions of a record for not being responsive to the scope
  - Fully unresponsive records should not be provided
  - If collected and fully unresponsive, it can be removed as “NR”
- We cannot redact incorrect information unless it otherwise falls into an existing harms disclosure exception “section”

What Can Be Redacted?

- Specific "exceptions to disclosure" sections exist, allowing harmful information to be withheld.
- The FOIPPA Policy & Procedures Manual provides summaries of these "harms" sections.
- Current cheat sheet located [here on the intranet]
- Staff do not need to remember these sections precisely.
- FOI is meant to ensure government transparency.

Disclosure Exceptions (Harms)

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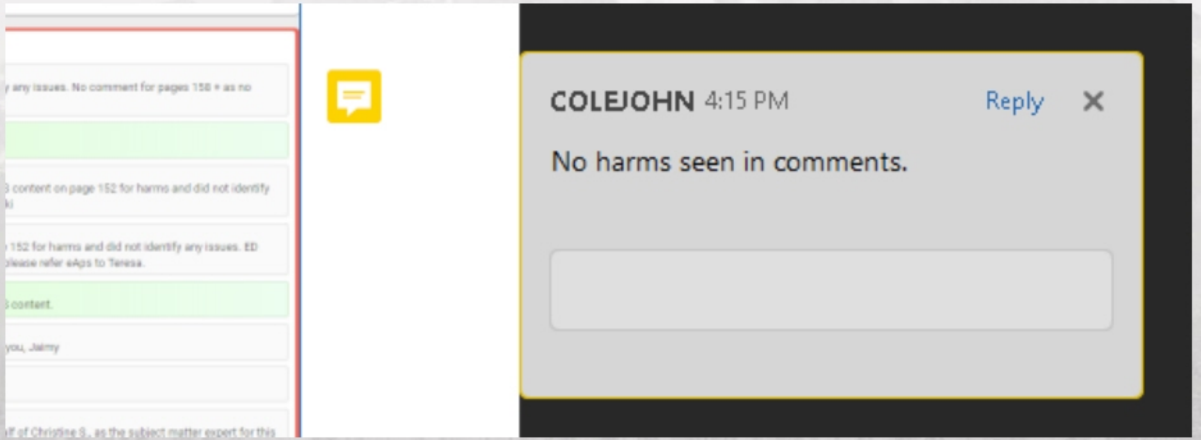
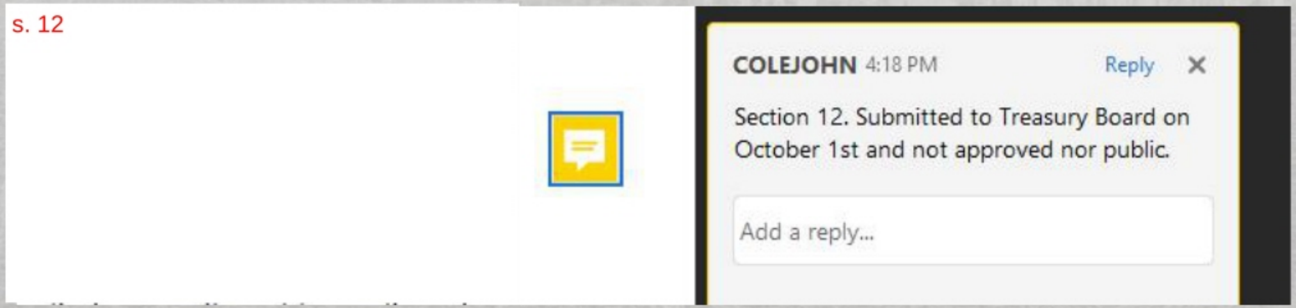
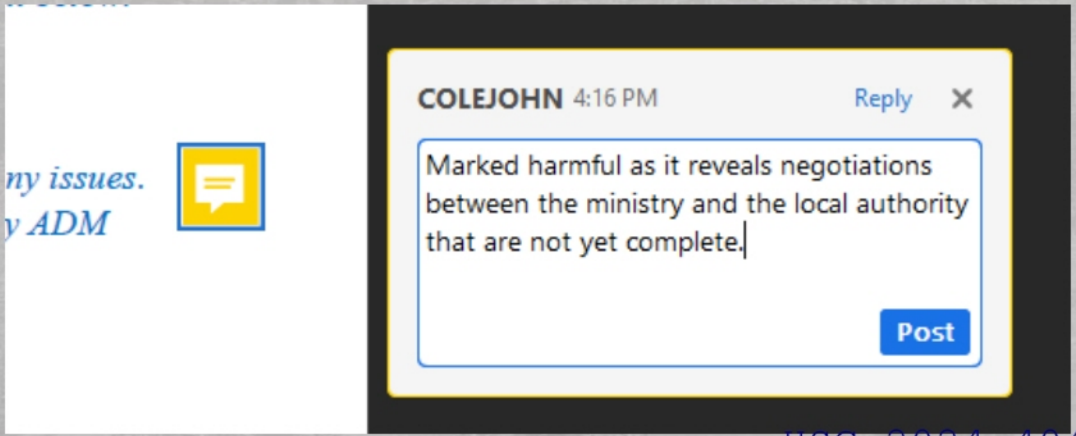
- Here are some commonly used sections allowing information severing.
  - **S.12** – Information revealing active Cabinet decisions and Treasury Board submissions or the substance of deliberation of the Executive Council or any of its committees
  - **S.13** – Policy advice, pending decisions, unselected recommendations
  - **S.14** – Legal advice, information under client-attorney privilege
  - **S.16** – Information harmful to intergovernmental relations or negotiations, whether it be federal, provincial, or local
  - **S.20** – Confidential information set to be released within 60 days
  - **S.21** – Information harmful to a business or other third party. Hard to apply. Must pass a three-part test.
  - **S.22** – Personal information, such as relating to family, vacations, personal email addresses, etc.6

PDF Comment Examples



s. 12





Redline Sign Off

- IAO processes ministry harms
- IAO returns “redline” package to ministry for final sign off
- FOI coordinator creates eApproval for ADM/ELs and DM
- eApps sent to each division that provided records
- ADMs/ELs approve, items returned to coordinator
- Coordinator merges eApps into one for DMO
- DM Teri Collins approves with ADM Tracy Campbell’s review
- FOI coordinator returns to AG Corporate and IAO
- Applicant receives package
- Records published online at a later date

Consultations and Proactives

- Other public bodies may send records for HOUS input when:
  - Records contain HOUS documents and information
  - Records have overlap between subject jurisdiction
  - Records include communications to/from HOUS

- The DMO and MO proactively release some select documents, such as:
  - Ministerial or DM briefing note summaries per month
  - Ministerial, DM, or parliamentary secretary monthly calendars
  - DM travel expense summaries or lists of awarded contracts

Consultations and Proactives

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- Divisions and branches are not typically involved in proactive releases of this type.
- When the ministry is consulting on records, it goes through the normal harms review process
  - Branch SME marks records
  - Branch lead approves harms assessment
  - Division lead approves harms assessment
- The ADM or EL determines if the DM should approve this package as well
- Ministries only have the one stage for FOI consultations
  - There is no separate fee estimate, collection, or sign off stage

Questions

- Thanks to making it through
- Let’s hear any questions you may have!