

## ACCESSING GOVERNMENT INFORMATION IN

# British Columbia

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### RESOURCES

***Freedom of Information and Protection of Privacy Act (FOIPPA)***

[http://www.oipcbc.org/legislation/FOI-ACT%20\(2004\).pdf](http://www.oipcbc.org/legislation/FOI-ACT%20(2004).pdf)

***British Columbia Information Policy and Privacy Branch***

<http://www.msar.gov.bc.ca/privacyaccess/>

***Guide to Access to Information and Protection of Privacy***

<http://www.oipc.bc.ca/pdfs/public/GuideToFOIPPAJune2004.pdf>

***B.C. Freedom of Information and Privacy Association***

<http://fipa.bc.ca/home/>

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***Disclaimer:***

*We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.*

*Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.*

*Please report any errors or omissions in this Manual to [cippic@uottawa.ca](mailto:cippic@uottawa.ca)*

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## **WHO CAN REQUEST GOVERNMENT INFORMATION?**

Anyone can request government information.

## **WHAT INFORMATION CAN I ACCESS?**

You have the right to access any record in the custody or under the control of a public body, subject to certain exceptions described below. Public bodies include the British Columbia government, Crown Corporations, municipalities, educational bodies and health care bodies.

## **WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?**

There are a number of circumstances in which you may be denied access to information, including the following:

### ***Publicly available information***

You may be denied access to information that is already available to the public. This includes information for which you must pay a fee and information that will be made available to the public within 60 business days of the date when the request is received.

If your request is refused because the information will be available within 60 business days, the public body must inform you when it becomes available. If it is still not available after 60 business days, the public body cannot deny access on the basis that the information will later be made public.

### ***Repetitive or frivolous request***

Your access request may be refused if it is repetitive, frivolous or vexatious. In order to reject your access request on these grounds, a public body must get authorization from the Information and Privacy Commissioner.

### ***Another Act prevails***

If the record you want is governed by an Act that specifies that *FOIPPA* does not apply, you cannot access it under *FOIPPA*.

### ***Law enforcement and legal proceedings***

Your access request may be refused if disclosure could be harmful to law enforcement. This includes information that would: jeopardize national security; reveal investigative techniques or details of an investigation; endanger anyone; deny someone a fair trial or otherwise harm legal proceedings; expose its source to civil liability; or facilitate the escape

of an inmate. In addition, if the disclosure of information is prohibited by law, your request for access will be denied. Furthermore, the public body may refuse to confirm or deny the existence of such information.

### ***Court records***

You cannot access government information found in the records of: courts, judicial administration or judicial support services, judges, magistrates, or justices of the peace. Similarly, the personal notes of judges and those acting in a judicial role are not accessible.

### ***Privileged information***

Your request for information may be denied if the information is protected by solicitor-client privilege.

### ***Advice***

Unless the public body consents, or unless the information is more than 10 years old, you cannot access records that could reveal advice or recommendations developed by or for public bodies. The term 'advice' is used broadly and includes proposals, analyses, policy options, draft law at the executive level, or any information that could likely result in disclosure of a pending policy or budgetary decision.

A public body must, however, give access to:

- any factual material;
- public opinion polls;
- statistical surveys;
- economic forecasts;
- results of environmental tests;
- results of consumer tests and reports;
- results of feasibility or technical studies;
- field research results;
- statements of reasons for using discretionary power;
- final reports or audits on a public body's performance or efficiency
- task force, committee or council reports;
- program plans, once the program has been approved or rejected; and
- information which is the stated basis for a policy decision.

### ***Cabinet confidences***

Unless Cabinet consents, or unless the information is more than 15 years old, you cannot access information revealing the substance of deliberations of the Cabinet or of Cabinet

committees. This includes information contained in agendas, policy analyses, proposals, briefs, and draft legislation or regulations. Background facts, however, may be disclosed if the decision they relate to has already been made or if more than five years have passed.

### ***Local public body confidences***

Your request may be refused if disclosure could reveal a draft regulation or bylaw or the substance of a confidential meeting. If, however, the information was shared at a public meeting or it is more than 15 years old, you may access it.

### ***Relations with other governments***

Unless the affected government institution consents, you may be refused access to information that could harm relations between British Columbia and other governments, including local, Canadian and foreign governments.

### ***Information provided in confidence by other governments***

You may be refused access to information that another government gave to the Government of British Columbia in confidence, either explicitly or implicitly.

### ***Economic and other interests of a public body***

Your access to information request may be refused if disclosure could harm the financial or economic interests of a public body. Information under this heading includes: public body trade secrets; information in which a public body has a proprietary interest; and information whose disclosure could lead to financial loss or prejudice a competitive position.

However, access must be granted to results of product or environmental tests unless the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

### ***Conservation***

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of: fossil sites, natural sites and heritage sites; and rare, endangered, threatened or vulnerable life forms.

### ***Business interests of third parties***

You may be denied access to information related to a third party's business interests if three

criteria are met. First, the information must relate to a third party's trade secrets or other information of a commercial, financial, labour relations, scientific or technical nature. Second, the information must have been supplied to the public body in confidence. Third, disclosure must be reasonably likely to harm the third party's business interests, or result in undue financial loss or gain to a third party, or reveal information about labour relations, or have a chilling effect on third parties' willingness to provide such information to public bodies.

### **Third-party privacy**

Your access request may be denied if disclosure would unreasonably invade a third party's privacy. Furthermore, a public body may refuse to confirm or deny the existence of information if to do so would unreasonably invade a third party's privacy.

Disclosure of the following will be presumed to be an unreasonable invasion of a third party's privacy:

- personal health information;
- information that is part of a law enforcement investigation record;
- a third party's financial information, including information about income, and credit-worthiness;
- a third party's personal recommendations, character references or personnel evaluations if disclosure could reveal who wrote them;
- a third party's employment or educational history;
- information revealing the race, ethnic origin, religious or political beliefs, or sexual orientation of a third party; and
- names, addresses or telephone numbers if the requester intends to use the information for mailing lists or solicitations.

The list above is not complete. Refer to *FOIPPA* for the complete list.

In determining whether disclosure of personal information would unreasonably invade a third party's privacy, a public body must consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm;
- whether disclosure would help resolve the claims, disputes or grievances of aboriginal people;
- whether the information is accurate and reliable; and
- whether disclosure could unfairly damage a third party's reputation.

There are, however, circumstances when, regardless of the above, disclosure will be permitted. These include:

- when the relevant third party consents in writing to disclosure;
- when there are compelling circumstances affecting the applicant's health or safety;
- when another Act expressly allows or requires disclosure;
- when disclosure is for research purposes and complies with *FOIPPA*'s research provisions;
- when the information relates to a public body employee's salary, classification, benefits, or expenses;
- when the information relates to a goods or services contract with a public body;
- when the information relates to a financial discretionary benefit to a third party; and
- when the information pertains to travel expenses.

### **Archived records acquired from private parties**

You cannot access archived records that were acquired from private parties – that is, from people or entities other than public bodies. If the information you want was placed in an archives by a private individual or organization, contact that party directly and ask permission to access the information.

### **Individual or public safety**

Your access request may be denied if disclosure could threaten individual or public safety.

### **Abortion services**

Information will not be disclosed if it relates to the provision of abortion services. However, such information must be disclosed when:

- it pertains to services received by the applicant;
- it is statistical; or
- it relates to a public body's policies regarding abortion.

### **Government information found in the following:**

Your request for the following information may be denied:

- exams or test questions;
- teaching materials or research of the employee of an educational institution;
- information relating to ongoing prosecutions; and

- the records of elected official if not in custody or control of a local public body.

### **Public interest**

You must be granted access to information if disclosure is clearly in the public interest, despite any other section of *FOIPPA*.

### **Exceptions related to personal information**

For exceptions more relevant to personal information, see *Accessing Personal Information in British Columbia*.

## **HOW DO I MAKE A REQUEST?**

### **1. Check whether the information is publicly available**

#### **2. Identify the appropriate public bodies**

a) *Determine whether the body is subject to access to information law*

*FOIPPA* applies to public bodies in British Columbia. These include provincial government ministries, provincial agencies, board and commissions, provincial Crown corporations, municipalities, school boards, universities, etc. For a list of public bodies, see Schedules 2 and 3 of the Act, which can be found at:

[http://www.oipc.bc.org/legislation/FOI-ACT%20\(2004\).pdf](http://www.oipc.bc.org/legislation/FOI-ACT%20(2004).pdf)

b) *Determine whether the information is in the custody or control of the public body*

Access-to-information laws only apply to records in the custody or control of a public body. If a record is destroyed, it is no longer in the custody or control of a public body, but it is an offence to wilfully destroy records in order to evade an access request.

#### **3. Contact the public body**

Call the public body and ask if it is willing to provide access to the information you want. Such informal methods can be effective, especially when the information you are requesting may be refused under one of the grounds above. Note, however, that informal access-to-information requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to request a review by the Information and Privacy Commissioner.

#### 4. Frame your request carefully

a) *Use government directories to identify likely sources of information*

The government of British Columbia publishes a directory of records available at the government bookstore and local libraries.

b) *Request "records"*

Request access to records, not to information. *FOIPPA* defines "record" broadly, to include: "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records."

c) *Request indexes, catalogues, and other records-management aids*

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two-step request process: once you decide which records you would like, you must file another request to which the public body will have 30 business days to respond.

As an example, one research team phrased its request as follows:

Records Management: We request all records related to the handling of records by the Smart Card Project. These include, but are not limited to: policies; standards; and procedures and practices concerning the collection, cataloguing, organization, access, security, retention, disposal, status, and audit trails pertinent to the project ... We also request any indices, catalogues, finding aids, databases, meta-data, and the like intended to facilitate management of, and access to, the records and documents relevant to the Smart Card Project.

d) *Be specific*

Unless absolutely necessary, try not to ask for all records related to a subject. The more narrow and specific your request is, the faster you will get a response and the less it will cost you. In addition, a narrow request is less likely to result in a time limit extension because it is unlikely to interfere unreasonably with the operations of the public body.

#### 5. If you need help

If you need help, ask the relevant public body. It is required to help you with your request and to respond without delay, openly, accurately and completely.

## 6. Where to send your request

A list of directors and managers of freedom of information and privacy for public bodies is available at: [http://www.mser.gov.bc.ca/privacyaccess/contacts/DMIP\\_List.htm](http://www.mser.gov.bc.ca/privacyaccess/contacts/DMIP_List.htm)

### DO I HAVE TO USE A FORM?

You do not have to use a form, but your request must be made in writing. A form is available, however, and it can help you structure your request. The form can be found at: [http://www.mser.gov.bc.ca/foi\\_pop/TT\\_Manual/pdf\\_docs/Sec6\\_AccessRequestForm.pdf](http://www.mser.gov.bc.ca/foi_pop/TT_Manual/pdf_docs/Sec6_AccessRequestForm.pdf)

### WHAT WILL IT COST?

A public body may require you to pay fees for locating and retrieving a record, preparing the record for disclosure, shipping and handling the record and providing a copy. However, you cannot be charged for the first three hours spent locating and retrieving a record, nor for time spent severing information from a record. Furthermore, you cannot be charged for access to your own personal information.

The public body will send you an estimate of the total fee before it begins any search on your behalf. If you do not reply, the body will assume you have abandoned your request and no further action will be taken. If you agree to the fee, a deposit may be required.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee, or it would otherwise be fair to waive the fee; or
- releasing the information is in the public interest.

The public body must reply to your fee-waiver request within 20 business days. If you are not satisfied with the response, you may appeal to the Information and Privacy Commissioner.

### HOW LONG WILL IT TAKE?

The public body must make every reasonable effort to respond to your request within 30 business days of receiving it. If your request is transferred to another public body, the transfer must be done within 20 business days and the new body must notify you of the transfer.

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the public body to which your request is being transferred; or
- the record originated with, or was first obtained by, the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to 30 business days or, with the Information and Privacy Commissioner's permission, for a longer period. The time limit for responses may only be extended when:

- your request does not provide enough detail for the public body to identify the requested record;
- you have requested a large number of records and responding within 30 business days would unreasonably interfere with the operations of the public body; or
- the public body needs time to consult with a third party or another public body before deciding whether to grant access to a record.

Unless an extension has been granted, failure to respond to a request within 30 business days is considered a denial of access. You can request that the Information and Privacy Commissioner review both the denial of access and the failure to respond on time. For more information, see "What else can I complain about?" below.

### **WHAT ARE MY OPTIONS REGARDING FORMAT?**

#### ***Copies or originals***

You may obtain copies of records or you may view the originals.

#### ***Language***

In British Columbia, you do not have the option of requesting that information be provided in a language other than English.

#### ***Alternative formats***

A public body is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests.

### **WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?**

If you are not satisfied with a public body's response, you have the right to request that the Office of the Information and Privacy Commissioner review that decision. For more information, see *Appealing Access to Information Decisions in British Columbia*.