3.
ACCESS TO RECORDS

Overview

This chapter covers

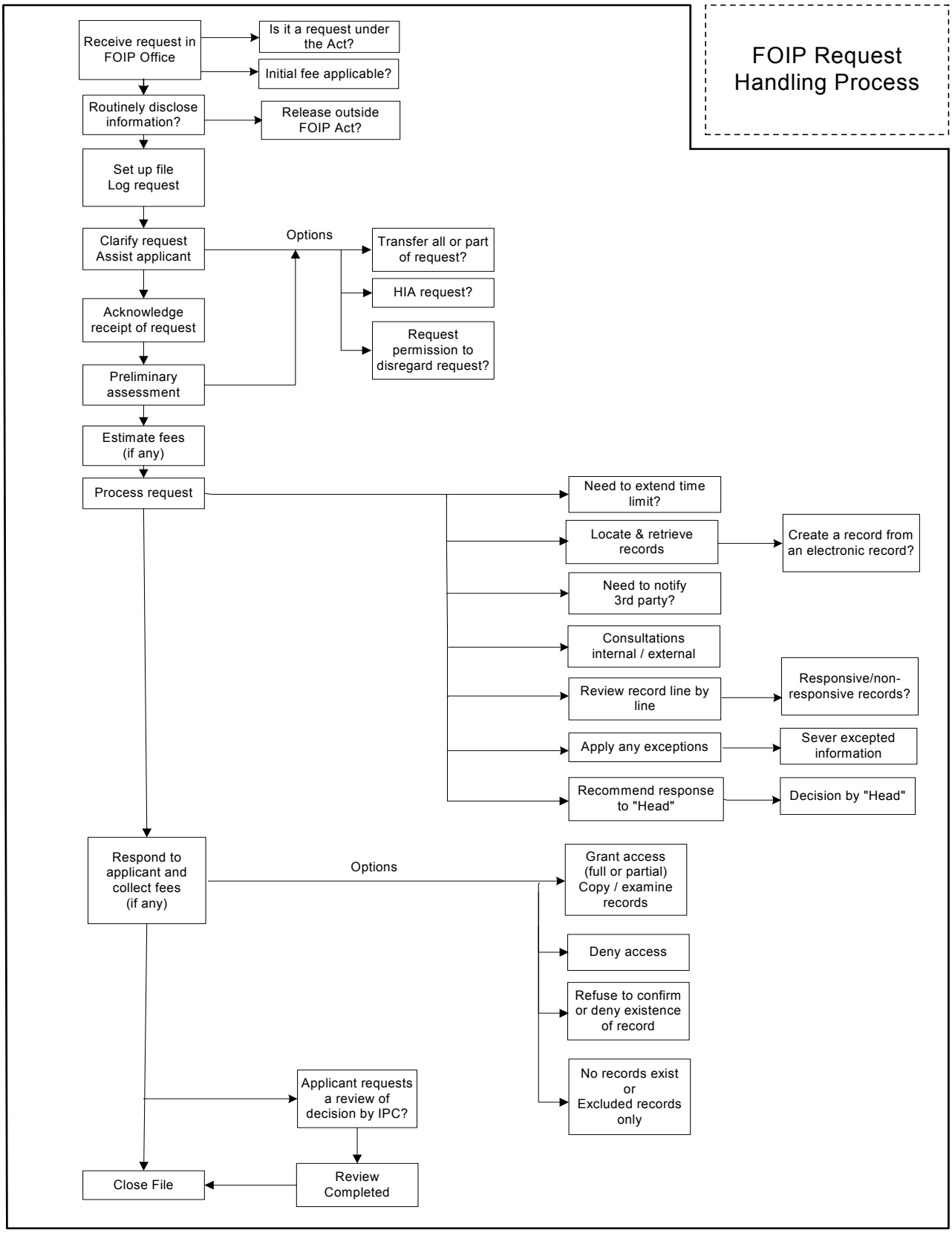
- the right of access to records;
- what to do when a FOIP request is received;
- how to deal with access requests that include health information if the public body is also a custodian under the *Health Information Act*;
- how to transfer a request;
- response time limits;
- steps in processing a FOIP request;
- how to assess fees; and
- how to manage request files.

For a diagrammatic overview of the FOIP request-handling process, see the flow chart on the next page.

3.1 Who has a Right of Access

Any person has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant (**section 6(1)** of the *FOIP Act*).

There are no restrictions as to who may make a request. The applicant can be any person who is residing inside or outside of Alberta, including individuals, corporations, and organizations. The Act does not specify a minimum age, which means that minors may also make requests.


FOIP Request Handling Process
Receive request in FOIP Office
Is it a request under the Act?
Initial fee applicable?
Routinely disclose information?
Release outside FOIP Act?
Set up file Log request
Clarify request Assist applicant
Options
Transfer all or part of request?
HIA request?
Request permission to disregard request?
Acknowledge receipt of request
Preliminary assessment
Estimate fees (if any)
Process request
Need to extend time limit?
Locate & retrieve records
Create a record from an electronic record?
Need to notify 3rd party?
Consultations internal / external
Review record line by line
Responsive/non-responsive records?
Apply any exceptions
Sever excepted information
Recommend response to "Head"
Decision by "Head"
Respond to applicant and collect fees (if any)
Options
Grant access (full or partial) Copy / examine records
Deny access
Refuse to confirm or deny existence of record
No records exist or Excluded records only
Applicant requests a review of decision by IPC?
Review Completed
Close File

3.2 Receiving a FOIP Request

Form of the request

Section 7(1) of the Act provides that an applicant must make a request to the public body that the applicant believes has custody or control of the particular record(s).

An *applicant* means a person who makes a request for access to a record under **section 7(1)**.

Section 7(2) requires that the request be in writing and provide enough detail to enable the public body to identify the record.

The applicant can use the official request form. A copy of the **Request to Access Information Form** can be found in Appendix 5. Public bodies may either use this form or create one of their own. Alternatively, an applicant may simply write a letter, requesting records and referencing the *FOIP Act.*

Section 7(3) permits an applicant to examine the record or to obtain a copy of it, subject to the exceptions in **section 4** of the FOIP Regulation (examination of the record would unreasonably interfere with the public body's operations or might result in the disclosure of information that the public body may or must not disclose).

As long as the original request was properly made, a change to the original terms of the request may be made orally, for example, where the applicant asks to examine records rather than to receive copies (see *IPC Order 99-011*).

Section 6(3) states that the right of access is subject to the payment of any fee required by the FOIP Regulation.

Section 11 of the FOIP Regulation states that an initial fee of $25 for a one-time request, or $50 for a continuing request, must accompany a request for general records. There is no initial fee when the applicant is requesting his or her own personal information (**section 12** of the FOIP Regulation).

Alternative methods of requesting access

Section 5 of the FOIP Regulation permits an applicant with limited ability to read English, or an applicant with a physical disability or condition that impairs the ability to make a written request, to make an oral request. The public body should put an oral request into written form and provide the applicant with a copy.

Public bodies should assist individuals seeking records under the Act who are disabled, do not have literacy skills or are otherwise unable to exercise their rights under regular procedures.

In the case of individuals with a hearing impairment, telecommunications devices for the deaf (TDD) should be used. For public bodies that use the Government of Alberta Call Centre, use should be made of the toll-free number 1-800-232-7215, and in Edmonton 780-427-9999, as a telecommunications device for the deaf. For visually impaired applicants, consideration should be given to helping the applicant make a request by assisting in filling out a request form.

A public body only needs to deal with a request in a language in which the body normally conducts business.

Some individuals who live in remote areas may be disadvantaged in comparison with other members of the public in their ability to make a FOIP request. Public bodies should take such situations into account and assist applicants in ways that will enable them to exercise their access rights without excessive cost or delay.

Duty to assist applicant

Section 10(1) The head of a public body must make every reasonable effort to assist applicants, and to respond to each applicant openly, accurately and completely. The public body's obligations under **section 10(1)** continue throughout the request process.

Every reasonable effort is an effort which a fair and rational person would expect, or would find acceptable (*IPC Order 98-002*).

The Information and Privacy Commissioner has provided a considerable amount of guidance on the duty to assist in Orders issued in a broad range of different cases. These Orders relate to situations that vary widely with respect to the type of applicant, the records involved, and the nature and context of the request. The public body's assistance to the applicant was often just one issue among many to be decided by the Commissioner. How a public body fulfils its duty to assist will vary according to the circumstances of each request, and requires the exercise of judgment in each case.

The duty to assist applies to a request by an applicant under the **section 7** of the Act. This duty also applies to an applicant's request for a fee waiver under **section 93(3.1)**.

The Act does not expressly require the head of a public body to meet the duty to assist under **section 10(1)** when responding to an individual's request for a correction of personal information under **section 36(1)**. While the Commissioner has not ruled on this specific point (see *IPC Order 98-010* on the duty to understand and seek clarification a request), public bodies are advised to consider the purposes of the Act when responding to any request under the Act.

The duty to assist under **section 10(1)** generally arises when a public body is performing activities that are not explicitly addressed in other provisions of the Act (as are, for example, fees and time limits). The most important aspects of the duty to assist are likely to arise in the course of

- providing the information necessary for an applicant to exercise his or her rights under the Act;
- clarifying the request, if necessary;
- performing an adequate search for records; and
- responding to the applicant.

Some of these stages are discussed in detail later in this chapter. This section is concerned with the way in which the duty to assist is engaged when performing these activities. The Commissioner has said that a public body may take into consideration that a sophisticated applicant, such as a professional researcher, may not require the

same level of assistance as another kind of applicant (*IPC Orders 96-014* and *2000-021*).

The duty to assist under **section 10(1)** lies with the head of a public body. In *Order F2007-028* the Commissioner said, with respect to the adequacy of a search – one of the principal aspects of assisting an applicant – that the head, or the head's delegate, should take a supervisory role and be aware of exactly what steps have been taken to locate records.

Providing information necessary for the exercise of rights under the Act

A public body's duty to assist is engaged when the public body has received an access request under **section 7** of the Act. A public body has no legal obligations under **section 10(1)** until a prospective applicant has submitted a request (*IPC Order 99-011* and *IPC Investigation Report 2001-IR-004*).

If there is any uncertainty as to whether a request is a request under **section 7** of the Act, the public body should clarify this with the person making the request and inform the person of the procedure for making a request under the Act (*IPC Investigation Report 99-IR-004* and *IPC Order 2001-013*). If there is more than one procedure for obtaining access to information, a public body must inform the applicant of this (*IPC Order 98-002*).

A public body that has received a request for personal information under **section 7** of the Act will not meet its duty to assist under **section 10(1)** unless it responds in accordance with the requirements of **Part 1** of the Act (see *IPC Order 99-035*). If the public body believes it would be more appropriate to disclose personal information under **section 40** of the Act, the public body should advise the applicant of the implications of a decision to proceed in that way (for example, the person would have no right to request a review by the Commissioner). If the person agrees to a different process, the person must withdraw the access request.

Clarifying the request

Many applicants are unfamiliar with the organization and administrative practices of public bodies. They may not be aware of the process by which a public body reaches or implements a decision or policy, the kind of records that may be generated in the course of that process, and the process of disposing of the records.

The FOIP Coordinator may need to assist the applicant in clarifying the request so that the public body can retrieve records of interest to the applicant (*IPC Orders 97-006* and *98-012*). Clarification of the request may involve assisting the applicant in defining the subject of the request, the specific kinds of records of interest, and the time period for which records are being requested.

The FOIP Coordinator must exercise care in questioning an applicant about the nature of his or her interest in a particular subject. If a question to an applicant could be seen as dissuading the applicant, or as a means of trying to obtain information not needed to process the request, the question should not be asked (*IPC Order 2000-015*). It is generally not necessary to ask why an applicant is asking for particular records.

Narrowing a request as a result of the clarification process can have significant implications for fees. The Commissioner has said that a public body has a duty to engage in the clarification process up to the point when the fee estimate is provided (*IPC Orders 99-011* and *2000-022*). However, a public body has no obligation to request clarification of a request that is, on its face, very clear (*IPC Order 2001-013*).

The process of clarifying requests is discussed in greater detail later in this section.

Performing an adequate search for records

A public body must conduct an adequate search for records that are responsive to the applicant's request (*IPC Orders 97-006* and *98-012*).

The Commissioner has said that there are two components of an adequate search. The public body must

- make every reasonable effort to search for the actual record requested; and
- inform the applicant in a timely fashion of what it has done (*IPC Orders 96-022* and *98-012*).

A public body must make a reasonable effort to identify and locate records responsive to the request (see *IPC Order 2000-030*). A public body cannot decide not to conduct a search for records on the basis of an opinion that no responsive records exist (*IPC Order 99-021*). In a case where a public body has conducted a previous search in response to another request, if there is any doubt that the request is for substantially the same information, the public body must conduct a completely new search. If the other search was substantially similar but earlier, the public body must search for records that may have been created since the earlier request (*IPC Order 99-021*).

A public body must search all locations, including off-site locations, where records might be found (*IPC Order 99-021*). The search strategy, not the amount of time spent on a search, will determine whether a public body has conducted an adequate search (*IPC Order 99-039*).

A public body is not required to search for records in the custody or under the control of other public bodies (*IPC Orders 97-006, 99-021* and *F2003-001*). It is not part of the duty to assist for a public body to inform an applicant of the location of other records (unless the public body knows that records may exist elsewhere), to provide indexes to files that are not required to be located and reviewed as part of the request, or to provide records retention and disposition schedules when they have not been requested (see *IPC Order 99-039*).

The obligation to search for records exists even if the public body believes it would be expensive, difficult and time-consuming to conduct the search. A public body is not required to search electronic back-up records if it does not have the ability to do so, but it may not *choose* not to search back-up electronic records if it has the ability to do so (*IPC Order F2007-028*). The process of searching for and retrieving responsive records is discussed in greater detail in section 3.4 of this chapter.

A public body must make every reasonable effort to identify and locate records responsive to a request, and provide the applicant with information regarding the processing of the request in a timely manner (*IPC Order 98-012)*.

Responding to the applicant

A public body must respond openly, accurately and completely. Even if an applicant has requested records that are not subject to the Act, the public body must respond and inform the applicant that records cannot be obtained under the Act (see *IPC Order 2000-022*).

In a case where more than one public body has received the same request from the same applicant, each public body must respond to the request on its own behalf (see *IPC Order 99-035*).

Copies of records must be legible where possible. When a record is severed, the public body should clearly identify the basis on which the record was severed (*IPC Order F2003-020*).

The duty to assist does not require that public bodies provide medical or legal interpretations of the information in records, or provide information to clarify the information in the records. It is also not necessary to disclose the nature or contents of records that are withheld in a response to an access request (*IPC Order 2001-041*). A public body is not generally required to make an applicant aware of records that may relate to the applicant's request but have not been specifically requested (*IPC Investigation Report 2001-IR-010*).

The process of responding to an applicant is discussed in greater detail in section 3.8 of this chapter.

Acknowledging receipt of request

The public body should acknowledge receipt of a request. This acknowledgment may indicate that the request

- has been received and processing will commence;
- is incomplete because the initial fee has not been paid and is required before processing can commence; or
- is not clear or precise enough and more information is needed to clarify it before processing can commence.

Under **section 7(2)** of the Act, a request must provide enough detail to enable the public body to identify the record. If processing cannot begin immediately because the request is not clear, an effort should be made to contact the applicant by telephone to resolve any problems quickly. There is no provision in the Act for putting a request on hold pending clarification with the applicant (see "Clarifying requests" later in this section). However, the time limit for responding to the request may be extended

under **section 14(1)(a)** if the applicant does not give enough detail to enable the public body to identify a requested record.

A written follow-up to the initial telephone contact with an applicant is good practice. It will provide a definite reference point as to when processing commenced and a statement of the agreement between the public body and the applicant as to the nature and scope of a request that has been clarified.

Model Letter A in Appendix 3 sets out various options for acknowledging receipt of a FOIP request.

Continuing requests

Section 9 An applicant may ask that a request continue in effect for a specified period of time up to two years. This permits the applicant to continue to receive records concerning a particular subject or issue at regular intervals over time, for example, quarterly.

The head of the public body may choose to accept or reject a continuing request. If the head accepts a continuing request, the public body may determine the schedule for release of records so that it meets both the needs of the applicant and the operational constraints of the public body.

The head of a public body may have grounds for rejecting a continuing request if

- the situation or event that is the subject of the request is not an ongoing matter and there is no basis on which to set up a continuing request; or
- the situation that is the subject of the request is dependent on other actions involving the applicant and the applicant is receiving the information routinely on an ongoing basis.

The Act applies to a continuing request as if a new request were received on each date that processing of an instalment of the request is due to begin. The public body is required to provide the applicant with a schedule indicating the series of dates when the request will be deemed to have been received, and to inform the applicant that he or she has the right to ask the Commissioner to review the schedule. On each scheduled date, the time limit for responding to the request begins again.

The FOIP Coordinator should have a system in place to alert his or her office when a request should be reactivated.

Section 13(3) of the FOIP Regulation requires a public body to provide an estimate of the total fees payable over the course of the continuing request. A new fee estimate need not be provided on each of the scheduled delivery dates. Rather, the public body must decide what portion of the estimate will apply to each delivery of records in the continuing request and provide this information to the applicant. To do this, the public body would estimate the total fees payable over the course of the continuing request and decide how much of that estimate is likely to apply to each delivery (see *IPC Order 97-019*).

Model Letters A and **B** in Appendix 3 deal with continuing requests.

Request for access to personal information about an applicant

Individuals may make requests for information about themselves.

The same general conditions that apply to receiving requests for access to general records apply to receiving requests for an individual's own personal information. However, there is no initial fee for requests for an individual's own personal information, and no service fees may be charged except fees for photocopying, if those fees exceed $10.

It is usually obvious on the face of the request that someone is requesting his or her own personal information. In some instances, however, someone else may be applying on behalf of the individual, and it will be necessary to determine whether the applicant has the authorization of the individual whose information is requested or has some other right under the Act. Common examples of persons who might reasonably request information about another individual are the legal representative of the individual, and the parent of a young child.

At times it may not be clear whether an applicant is requesting his or her own personal information or general records about a subject in which the individual has been involved. The Information and Privacy Commissioner dealt with this issue in *IPC Order 97-003*. A three-part test was applied, whereby the public body would

- consider the wording of the request;
- characterize the request as to whether it is primarily for general records or is for personal information about the applicant; and
- decide whether the records relate to and are responsive to the request being made and whether the preponderance of records relates to the individual.

On this basis, the public body would decide whether it is dealing with a request for personal information.

For further guidance on requests by a representative of an individual for personal information of that individual, see Chapter 2, section 2.5.

Request for access to personal information that includes health information

For public bodies that are not custodians under the Health Information Act

For these public bodies, information about an individual's health and health care history that is part of an access request is considered personal information under **section 1(n)(vi)** of the *FOIP Act.*

For public bodies that are custodians under the Health Information Act

The definition of record in **section 1(q**) of the *FOIP Act* is the same as the definition of record in section 1(1)(t) of the *Health Information Act*. **Section 4(1)(u)** of the

FOIP Act says that the *FOIP Act* does not apply to health information, as defined in the *Health Information Act*, that is in the custody or under the control of a public body that is a custodian, as that term is defined in the *Health Information Act* (see *IPC Order F2002-015*).

In the event that a public body subject to both Acts (e.g. the department of Health and Wellness or Alberta Health Services) receives a request for access to an individual's personal information, the rules regarding access to information under the *Health Information Act* would apply to the individual's *health information*. Subject to **section 4(1)(u),** the rules regarding access to personal information under the *FOIP Act* would apply to the individual's or another person's *personal information*, as that term is defined in **section 1(n)** of the *FOIP Act*.

For example, if a visitor to a hospital was injured during an incident involving a scuffle with hospital security staff and was treated at that hospital, the visitor's health information as a patient of the hospital would be subject to the *Health Information Act* access rules. However, any other personal information about the visitor collected or created by security staff as a result of the incident would be subject to the access rules under the *FOIP Act*. Another example of records that may be subject to the two Acts would be employee records that contain both health information and personal information about an individual.

Under **section 15.1** of the *FOIP Act*, if a request for access to a record is made under **section 7(1)** of that Act, and a part of the record contains information to which the *Health Information Act* applies, the part of the request relating to the health information is deemed to be a request under section 8(1) of the *Health Information Act* and the rules in that Act will apply to the processing of that part of the request (*IPC Order F2004-005*).

The applicant must be notified regarding the part of the request that will be processed under the *Health Information Act*, and whether this will affect the timelines for responding. **Model Letter A.1** in Appendix 3 can be used to notify an applicant that part (or all) of a request is being deemed to be a request under the *Health Information Act*. Applying the *Health Information Act* to part of the request should not have an impact on the request process. The processing of access requests under both Acts is similar.

If FOIP requests and *Health Information Act* requests are handled by two different persons or offices within a public body, it is important for the two persons or offices to consult with one another regarding a request for access to records containing both types of information. The public body will have to make decisions regarding the disclosure of records in accordance with the Act that applies to the relevant portion of the records requested.

If both types of requests are handled by the same person or office, a separate file should be opened and a request number assigned for each request. One request would be for access to the individual's personal information and the other request would be for access to the individual's health information.

The **Fee Schedule** in the FOIP Regulation would apply to the personal information requested, except for the portion of the records containing information to which the

Health Information Act applies. The Fee Schedule under the Health Information Regulation would apply to the portion of the request related to health information.

Although a public body that is a custodian under the *Health Information Act* will process different portions of an individual's request for his or her own information under both Acts, it may wish to apply the lower fees of the two fee schedules, where possible, unless the majority of the information requested is health information and significant review time will be required. Under section 10(3) of the Health Information Regulation and section 2(o) of Schedule 2 in the Regulation, a fee may be charged for the time it takes to review and determine whether any severing will be required. Under **section 12(2)** of the FOIP Regulation, a fee cannot be charged for this review time.

More information on processing requests under the *Health Information Act* may be found in the *Health Information Act Guidelines and Practices Manual (2006)*, published by Alberta Health and Wellness.

Authorization to disregard requests

Section 55 In exceptional cases, a public body may ask the Information and Privacy Commissioner to authorize the public body under **section 55(1)** of the *FOIP Act* to disregard certain requests.

The head of a public body may be allowed to disregard a request if it is

- repetitious or systematic in nature, and processing the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make requests (**section 55(1)(a)**); or
- frivolous or vexatious (**section 55(1)(b)**).

In considering whether **section 55(1)** applies, the Commissioner has said that he will be mindful of the principles of the *FOIP Act* and the relevant circumstances. A public body must show that either **section 55(1)(a)** or **55(1)(b)** applies to the request (Commissioner's decisions of April 10, 2002 and February 5, 2003).

Repetitious or systematic requests

A public body may request authorization to disregard repetitious or systematic requests only if processing the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right of access.

A request is *repetitious* when a request for the same records or information is submitted more than once (Commissioner's decision of March 13, 2007).

Systematic in nature includes a pattern of conduct that is regular or deliberate (Commissioner's decision of March 13, 2007). The Commissioner found that the submission of five access requests of similar scope over a period of two and a half years was systematic in nature (Commissioner's decision of April 10, 2002).

In determining whether a request is *repetitious*, a public body may not take into consideration attempts to obtain access to the information through means other than the *FOIP Act*. Requests made outside the *FOIP Act*, including requests in the course

of the collective bargaining and arbitration processes, are not relevant to **section 55(1)** (Commissioner's decision of February 5, 2003).

In *Order 2006-028*, the Commissioner was asked in the course of an inquiry for authorization to disregard a request under **section 55(1)**. The Commissioner reiterated that using more than one process to obtain access to records (in this case pre-trial disclosure of documents) did not limit the applicant's right of access under the *FOIP Act*. **Section 3(a)** of the Act specifically allows for more than one process for obtaining access to records. The Commissioner noted in his decision that an authorization to disregard a request was not an Order.

The Commissioner ruled that a fourth request for substantially the same records as in three previous requests was repetitious and an abuse of the right to make requests. The *FOIP Act* was not intended to allow an applicant to resubmit the same or similar access requests to a public body simply because the applicant does not like the information obtained (Commissioner's decision of March 21, 2002).

The Commissioner also ruled that a request was repetitious in a case where the applicant was connected in some material way to, or associated with, a person who had made requests for similar material. The Commissioner found that the applicant's access request was no less an abuse of the right to make requests than if the other person had made the access request. In that case, the Commissioner authorized the public body to disregard future access requests made by those parties, as well as any other requests in which it was clear that the person who made the original requests was the "directing mind" (Commissioner's decision of August 7, 2002).

A request under the *FOIP Act* made after exhausting other avenues for access does not make the FOIP access request *systematic* in nature. That would be contrary to the intent of the *FOIP Act*, which is to grant a right to access to information that is not otherwise available to the person seeking that information (Commissioner's decision of February 5, 2003).

Unreasonable interference with the operations of a public body might be demonstrated by showing the impact that particular repetitious or systematic requests are having on the resources needed to respond within a public body, and the actual cost of providing a response.

Frivolous or vexatious requests

Frivolous means of little weight or importance (Commissioner's decision of February 5, 2003).

Vexatious means without reasonable or probable cause or excuse (Commissioner's decision of February 5, 2003). A request is *vexatious* when the primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill (Commissioner's decision of November 4, 2005).

In determining whether a request is *frivolous*, the Commissioner has noted that information that may be trivial from one person's perspective may of importance from another's. In deciding whether a request was frivolous, the Commissioner considered the evidence and found that the applicant perceived the information

sought as a matter of importance and that the focus of the applicant's actions was on the information requested. The Commissioner decided, from an objective point of view, that the access request in question was not frivolous (Commissioner's decision of February 5, 2003; see also Commissioner's decision of November 4, 2005).

The Commissioner has ruled that an applicant's attempts to obtain access to information through means outside the *FOIP Act*, including requests under collective bargaining and arbitration processes, are not relevant in determining whether the applicant's access request under the *FOIP Act* is *vexatious* (Commissioner's decision of February 5, 2003).

The Commissioner has also observed that an institution's subjective view of the annoyance quotient of a particular request is not sufficient grounds for disregarding a request. The fact that a request might result in the disclosure of information that the public body might prefer not to disclose would also not be grounds for relief under **section 55(1)(b)** (Commissioner's decision of February 5, 2003; see also Commissioner's decision of November 4, 2005).

Effect of an authorization request on time limits

If the head of a public body asks the Commissioner to authorize the public body to disregard a request for access under **section 7(1)** or a request for correction under **section 36(1)**, processing of the request ceases until the Commissioner has made a decision. If the Commissioner authorizes the head of the public body to disregard the request, processing does not resume (**section 55(2)(a)**). If the Commissioner decides not to authorize the public body's request, processing resumes after the Commissioner advises the head of the public body of that decision (**section 55(2)(b)**).

In a decision on one request for authorization to disregard an access request, the Commissioner authorized the public body to disregard any and all future requests made by the applicant under the *FOIP Act* for a period of three years (Commissioner's decision of March 13, 2007).

See IPC FOIP Practice Note 9: *Authorization to Disregard Request under Section 55,* published by the Office of the Information and Privacy Commissioner, as well as the Commissioner's decision of February 5, 2003, for information regarding the procedure for requesting authorization to disregard a request under **section 55(1)** and each party's right of reply.

Clarifying requests

Vague or overly general requests may increase workloads and lead to review of information that is of little interest to the applicant. Often requests are broad or vague because the applicant lacks knowledge of the public body, its mandate and programs and the type of records available.

If a request is unclear, the FOIP Coordinator should establish contact with the applicant to better understand what information will satisfy the applicant's needs. If a request does not sufficiently describe the records sought, a public body should advise the applicant and offer assistance in reformulating the request.

Model Letter A in Appendix 3 deals with this type of situation. There are several things to keep in mind when seeking to define or clarify a request.

Release of information outside the FOIP process

A public body may be able to satisfy an applicant's information needs by providing records that are already publicly available, or that can be made available through a process of routine disclosure. When a FOIP request can be dealt with outside the Act, and if no other fee structure applies, the initial fee may be returned to the applicant, along with a copy of the requested record(s). If there is a procedure in place to refer an applicant to the appropriate program area, the fee should not be returned until the applicant has agreed to have the request handled outside the Act by the program area.

The applicant must agree to withdraw the request; otherwise, the public body is required to respond to it under the Act. In some instances, only part of the information can be routinely released. In such cases, this information may be released and the rest of the request processed under the Act.

Narrowing a request

It is important to discuss with the applicant any request that involves a large amount of information or is estimated to require a large amount of search time. In *IPC Order F2007-017*, the Commissioner said that a request for a large number of records resulting in a fee estimate of $144,000 should have signalled to the public body that clarification of the request was required. The objective of clarifying the request in a case such as this is to narrow the request while still meeting the applicant's information needs. This can result in a reduction of fees and provision of better service, in terms of both time and results.

Changing the scope

After discussion of the nature of a request, an applicant will sometimes change the scope of the request. When this occurs, the public body should document the change and send a notice to the applicant (see **Model Letter A** in Appendix 3).

Clarifying a request in relation to a public body's duty to assist under **section 10(1)** is discussed earlier in this section.

Documenting and tracking requests

A public body should maintain a tracking system to document all deliberations and decisions regarding the processing of a request and to help ensure that the processing of the request meets the requirements of the Act. This record may become a critical part of the evidence required during a review by the Information and Privacy Commissioner. It can also be of assistance in the processing of subsequent similar requests (see *IPC Order 99-011*).

As provided in **section 3** of the FOIP Regulation, the 30-day time period for responding to requests commences on the day after receipt of a request in the office of the public body designated to receive such requests. This is normally the office of the FOIP Coordinator.

Authorized offices are listed in the directory published on the website of Access and Privacy, Service Alberta (foip.alberta.ca) and may be publicized in other ways. Authorized offices are usually the offices of the head of the public body and the FOIP Coordinator.

A request may be delivered to any office of a public body during normal business hours, but the time limit for responding to the request does not commence until the request is received in an office authorized to receive requests.

Section 3(3) of the FOIP Regulation requires the public body to have a reasonable system in place to ensure that FOIP requests are forwarded immediately to the office(s) designated to receive and begin processing them. Reasonable steps might include special forwarding instructions to staff in mail rooms within the public body and to staff that open the mail, as well as use of a colour-coded transmittal file. Most importantly, staff should be aware of the urgent nature of FOIP requests and the need to forward them immediately to the FOIP Coordinator.

Offices designated to process FOIP requests should date-stamp all requests on receipt.

Public bodies may use an automated or manual tracking system. An automated tracking system is used by all Government of Alberta ministries and is available for use by other public bodies. This system is most beneficial to public bodies that receive 10 or more requests annually.

When implementing or designing a system, a public body should keep in mind that it must provide the information that the Minister responsible for the *FOIP Act* requires for reporting to the Legislative Assembly on the operation of the Act. Notices regarding reporting requirements are regularly issued to public bodies by Access and Privacy, Service Alberta.

Transferring a request

There are occasions when an applicant makes a request to one public body that would be more appropriately handled by another public body. This may be the case if the other public body produced the record, was the first to obtain the record, or has custody or control of the record.

A public body has discretion in deciding whether to transfer a request to another public body. The Information and Privacy Commissioner has found no significant relationship between the mandatory duty to assist and the discretion to transfer a request (see *IPC Order 2000-021*).

A request for correction of personal information may also be transferred if another public body originally collected the information or created the record (**section 37**).

If the FOIP Coordinator is aware that part of a request relates to records of another public body, the public body receiving the request should inform the applicant that he

or she can make a request to the other organization for the records relating to another part of the request.

Transfer procedure

Section 15(1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record, to another public body if

- the record was produced by or for the other public body;
- the other public body was the first to obtain the record; or
- the record is in the custody or under the control of the other public body.

In *IPC Order 2000-021*, the Information and Privacy Commissioner said that one of the following three conditions must be satisfied for a request to be transferred:

- the public body receiving the transferred record generated the record, whether it created the record itself or instructed an employee or agent to create the record on its behalf;
- the public body receiving the transferred request was the first entity to obtain the record after its creation by another party, whether or not obtaining the record was intentional; or
- the public body receiving the transferred request has custody or control of the responsive record at the time of the transfer of the request.

In addition, the Commissioner said that the Act does not require the public body transferring the request to consult with the public body receiving the request before the transfer is made. In practice, however, it may be useful to consult with the FOIP Coordinator of the other public body before transferring the request.

In many cases, interest in the disclosure of particular records will exist in several public bodies. This might be the case, for example, with requests for the records of interdepartmental or multi-organizational committees, or requests for records relating to budgeting processes and programs in which two or more public bodies are involved.

For the sake of administrative simplicity and good client service, the public body receiving a request that relates to more than one public body should process it, consulting and seeking advice from the other interested bodies, rather than attempting to negotiate a complicated sharing of the request. In such cases, the public body processing the request has the final decision as to what will be disclosed. The applicant should be informed if a public body makes an informal request to another public body to search for records. (*IPC Order 99-021*.)

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Where similar requests are directed to a number of provincial public bodies, Access and Privacy, Service Alberta may take a coordinating role. Such coordination involves explaining difficult issues and promoting communication among public bodies. Decision-making about a request will always remain with the public body processing a request.

Transfer of a request for correction

Section 37 A public body may transfer a request to correct personal information if

- the personal information was collected by another public body, or
- another public body created the record containing the personal information.

This provision allows the public body that originally collected the personal information or created the records to make the corrections, annotation or linkage required. The onus is then on that public body to inform others to whom the information has been disclosed of its decision about the request.

If the public body decides not to transfer a request for correction, it should consult with any other public body that collected the personal information or created the record containing the information.

Conditions of transfer

Sections 15(2) and 37(2) When a request is transferred, **sections 15(2)** and **37(2)** of the Act require the public body that transferred the request to provide notice to the applicant as soon as possible. **Model Letter C** in Appendix 3 deals with notice to an applicant regarding the transfer of a request.

Sections 15(2) and **37(2)** also require the public body receiving the request to make every reasonable effort to respond to the request within 30 days after receiving it, unless a time extension is sought on one of the grounds set out in **section 14** of the Act.

The public body to which the request is transferred should also acknowledge receipt of the request by writing to the applicant, using **Model Letter A** in Appendix 3.

Consultation

When a public body receives an access request and the request deals with records that originated in another public body, or with matters in which another public body has a direct interest, it should consult with that public body. This will ensure that all relevant factors are taken into consideration in deciding whether or not to disclose all or part of the records. A public body should also consult with another public body with respect to a request for correction in similar circumstances.

Two public bodies may deal with different aspects of the same matter or policy and may even disagree on policy directions or administrative actions to be taken. The public body receiving the request should ensure that the views of the other body have been taken into consideration in any decision to disclose or to refuse access to all or part of the records concerned.

If more than two public bodies are involved, the consultation process should ensure that all parties are aware of each other's views. Public bodies that regularly need to consult with other public bodies on disclosure in response to access requests may need to set out their procedures for consultation and decision-making in policy.

3.3 Response Time Limits

Section 11(1) of the Act provides that public bodies must make every reasonable effort to respond to a request no later than 30 calendar days after receiving it, unless

- the time limit is extended under **section 14**; or
- the request is transferred to another public body under **section 15**.

Every reasonable effort means the effort that a fair and rational person would expect to be made and would find acceptable. A public body's effort is expected to be thorough and comprehensive (see *IPC Order 98-002*).

When calculating time periods, statutory rules apply. Alberta's *Interpretation Act* says that if a time is expressed to begin after, or anything is to be done before a specified day, the time does not include that day. The 30-day time limit for processing requests is based on calendar days, not working days. The time limit begins on the day after the request is received in a duly authorized office and any initial fee is paid. If a time limit expires on a Sunday or other holiday, the time limit is extended until the next working day.

If the request is incomplete and further information is required from the applicant in order to identify the records sought, a public body should seek this information immediately. The requirement to clarify the request does not change the date on which the time period commences, but may necessitate a time limit extension.

Deemed refusal

Section 11(2) Failure by a public body to respond to a request within the 30-day time limit, or a time limit extended under **section 14**, can be treated by the applicant as a decision to refuse access to the record(s). Failure to respond to a request may be reviewed by the Information and Privacy Commissioner (see *IPC Order 99-039*).

Time limit extensions

Section 14 A public body may extend the time limit for responding to a request. The circumstances in which an extension is permitted are limited, and, in some cases, the permission of the Information and Privacy Commissioner is required.

A public body may extend the time limit for responding by up to 30 days, allowing a total period of up to 60 days, in any of the following circumstances.

- The applicant does not give enough detail to enable the requested records to be identified. This may be because the request is vaguely worded or, for some other

reason, the record is impossible to locate from the description provided. In this case, clarification is needed from the applicant.

- A large number of records are requested or must be searched, or a large number of records must be reviewed, and responding within 30 days would unreasonably interfere with the operations of the public body. This type of request will usually result in discussions with the applicant to try to narrow the scope of the search.
- More time is needed for the public body to consult with other public bodies, other levels of government, or third parties. This provision applies to third party consultations as required under **section 30** of the Act (which may take up to 20 days), consultation with other governments under **section 21** (for which there is no specified time limit), and consultation with other public bodies (where the public body has no legislated power to compel a timely response).

If a public body believes that it still cannot complete processing of the request within a 30-day extension period, the public body may ask the Commissioner for a longer extension.

Public bodies must continue to process a request while awaiting the Commissioner's response to an extension request.

Section 14(1)(d) allows for a time limit extension when a third party asks the Commissioner to review a head's decision on a request. In order to allow time for the third party to ask the Commissioner to review the decision, an additional 20 days may be required. For further information on time limit extensions related to the third party notice process, see FOIP Bulletin No. 10: *Third Party Notice*, published by Access and Privacy, Service Alberta.

If a review by the Commissioner is requested by a third party, the records requested by the applicant must be withheld until the review is completed and any Order issued.

Section 14(3) allows the head of a public body to extend the time limit for responding to a request in accordance with **section 14(1)(a) to (d)**, without seeking the permission of the Commissioner, even if the cumulative effect of granting allowed extensions takes the time period beyond 60 days. This may occur if the need to consult with a third party is not recognized until late in the processing of a large request. In this case, the extension is needed to provide sufficient time to comply with the notification provisions of the Act (see *IPC Investigation Report 2000-IR-001*).

The public body should consider all factors relating to the need for a time limit extension before extending the time limit. Common factors include

- the amount and type of detail required from the applicant to clarify a request;
- the breadth and complexity of the request, the number of records requested, and the number of files that must be searched to find the requested records;
- the number and complexity of consultations required with external organizations, such as other public bodies or other levels of government;

- the quantity and type of records requiring review by other public bodies (public bodies are not third parties for the purposes of notices and time limits under **sections 30** and **31**; however, they may reasonably be expected to respond in a timely manner); and
- the amount of time needed for the Commissioner to deal with a request for review (the Commissioner's office should be consulted on this matter).

The public body should indicate to the applicant the specific provision that it is relying upon for the time limit extension (see *IPC Investigation Report 2000-IR-001*).

The Act does not provide for extensions for other administrative reasons, such as

- consultations within the public body after the records have been located; or
- working conditions arising from sickness, staff absence or vacation, or staff workloads.

Limits on extensions

A public body should make every effort to plan the processing of a complicated request so that there is no more than one extension. A public body may, on its own authority and within the time limits under **section 14(1)**, extend the time limit for another 30 days or less to enable the head to comply with the requirements of **section 31**.

If a public body is able to determine that responding to the request will require more than a total of 60 days, the head is required to ask the Commissioner for permission to extend the time limit beyond the original 30 days. This must be done in writing, and normally within the original 30-day time limit. The reasons for the extension must meet the conditions of section 14(1).

A letter requesting an extension by the Commissioner should set out the specific reasons why a period greater than 60 days is required to process the request. The letter should propose a reasonable period of days for producing a response.

Normally, if a public body has already taken a 30-day extension under its own authority, it should not seek a further extension from the Commissioner. However, this may be done in exceptional circumstances, where complications not originally contemplated when planning the response process arise. An example might be where a public body has already claimed an extension of 30 days because of the need for extensive consultation. On the 45th day, as a result of that consultation, it discovers additional records that have to be searched and from which responsive records will be retrieved. In this case, the public body would request the permission of the Commissioner to extend the period for response to the applicant.

Section 14(2) of the Act also provides for a public body, with the Commissioner's permission, to extend the time limit for responding to a request in the following circumstances:

- multiple concurrent requests are made by the same applicant, or
- two or more applicants who work for the same organization, or who work in association with each other, make multiple concurrent requests.

This provision acknowledges the difficulty that a public body may have if one or more applicants make a number of requests at the same time.

Section 14(2) applies to any time limit extension, even if only an additional 30 days are required. A public body requesting an extension from the Commissioner under **section 14(2)** should provide information about the multiple concurrent requests, as well as any of the factors set out in **section 14(1)** that will affect the processing of the requests.

If the Commissioner refuses to grant a time limit extension under **section 14(2)**, the public body may consider each request separately to determine whether an extension is needed under **section 14(1)**.

A public body must document the reasons for a time limit extension. This documentation will be helpful in case of a complaint by the applicant to the Commissioner.

Notification

Section 14(4) This provision of the Act requires a public body to notify the applicant that an extension is being taken, the reason for it, the date when a response can be expected, and that the applicant has the right to make a complaint to the Information and Privacy Commissioner about the extension.

Model Letter D in Appendix 3 deals with time extensions. This notice should be given as soon as it is apparent that the request cannot be processed within the initial 30-day time period.

When a request for an extension is made to the Commissioner, the notice should be sent to the applicant before the Commissioner's final decision has been made as to whether the extension will be granted.

After investigating a complaint about a time limit extension, the Commissioner may either confirm or reduce the extension, as provided in **section 72(3)(b)**.

Impact of third party notice on response times

When a public body gives notice to a third party under **section 30**, the deadline for a final response to an applicant must take into account the time required to allow the third party to respond. No decision may be made before either 21 days after the day notice is given or the day a response is received from the third party, whichever is earlier. The public body should notify the third party as soon as possible after receiving a request in order to minimize the delay in responding.

Giving a third party notice is discussed in Chapter 5.

Day of response

Under Alberta's *Interpretation Act*, if the day a response is due falls on a holiday or a day when the office of a public body is closed, then the response is due on the next business day. For example, a third party has 20 days to request a review by the Information and Privacy Commissioner after the public body has notified the third party of a decision regarding access to records affecting the third party. If the 20th day falls on a Sunday, the third party would have until the next business day (Monday) to request a review. The public body could not release the records that were the subject of the third party notice to the applicant until the following day (Tuesday).

The head of the public body is responsible for determining whether the office that is authorized to handle requests is closed. For example, a school board is still responsible for processing requests when offices of the administration are open but individual schools are closed. A process must be established in such cases to ensure records are retrieved.

If a public body, such as a small municipality, completely closes its office for staff vacations, then the completion of the request will be affected and may not commence until the first working day after the office reopens.

3.4 Processing a FOIP Request – Search and Retrieval

In responding to FOIP requests, it is important that a public body clearly assign responsibilities for the various processing steps. This section outlines the assignment process and describes the responsibilities of program areas in a decentralized organizational model, where retrieval and review of records is performed in program areas and the office of the FOIP Coordinator carries out management of the final decision-making. In a centralized model, the office of the FOIP Coordinator will carry out all the duties outlined in this chapter. (Conducting an adequate search for responsive records in relation to a public body's duty to assist under **section 10(1)** is discussed in section 3.2 of this chapter.)

Public bodies should develop procedures for processing requests and for doing so within applicable time limits and in accordance with the requirements of the Act. Public bodies should also create and retain documentation on their processing of requests. The forms provided in Appendix 5 may be used or adapted for this purpose.

Model **FOIP Request Charts** are provided in Appendix 4.

Receipt of a request

Once a request is received in the office of the FOIP Coordinator, it should be registered. The request should then be placed in a request file and details of the request forwarded to any program area that may have custody or control of requested records. The office of the FOIP Coordinator can record this assignment of responsibility in the request tracking system.

The request should be accompanied by a **FOIP Transmittal Memorandum** and **Access Request Processing Summary** for recording all activities and the time involved in processing the request, in order to document these activities and assess

the appropriate fees. A model **FOIP Transmittal Memorandum** and an example of an **Access Request Processing Summary** are included in Appendix 5.

The identity of the applicant should be disclosed only

- to those officials and employees of the public body who have a need to know it in order to carry out their job duties; and
- to the extent necessary to carry out the public body's functions in processing the applicant's request.

For instance, where the request is for general records, the FOIP Coordinator should forward only the request for records and not the name of the applicant or other identifiers to program areas within the public body (see *IPC Investigation Report 98-IR-009* and *IPC Order 99-021*).

An access request contains recorded information about an identifiable individual. The personal information of the applicant can be disclosed to another employee of the public body only if the employee has a need to know that information (see *IPC Order 2000-023*).

Locating, retrieving and copying records

A public body must make a reasonable effort to identify and locate records responsive to the request (see *IPC Order 2000-030*).

A search for responsive records must consider all records, as defined in the Act, including all electronic records that are in the custody or under the control of the public body.

A public body must search all locations, including individual offices, central active files and off-site locations, where records might be found (see *IPC Order 99-021*).

The search for electronic record may include electronic information management systems, business applications, shared directories, e-mail systems, websites, collaboration sites, and social media.

Electronic devices, including laptops, BlackBerries and other PDAs, cellular phones, portable media and storage devices, may need to be searched as well.

A public body may also have to search for responsive records under its control that are in the hands of a third party (see *IPC Order F2002-014*). This would include records in the possession of a contractor. A public body is not required to search for records in the custody or under the control of other public bodies (*IPC Order 97-006*).

Records and information management staff may be able to identify finding aids that will assist in locating relevant records in paper and electronic formats. Finding aids may include classification schemes, records retention and disposition schedules, records inventories for particular repositories, and indexes to specific systems.

A public body must be prepared to support claims for the adequacy of a search with evidence as to how the public body conducted its search in the particular

circumstances (*IPC Orders 98-003* and *2000-030*). In *IPC Order 2007-029*, the Commissioner stated that evidence as to the adequacy of a search should cover the following:

- the specific steps taken by the public body to identify and locate responsive records,
- the scope of the search conducted (e.g. physical sites, program areas, specific databases, off-site storage areas),
- the steps taken to identify and locate all possible repositories of relevant records (e.g. keyword searches, records retention and disposition schedules),
- who did the search, and
- why the public body believes no more responsive records exist than what has been found or produced.

The program area is normally responsible for locating and retrieving all records relevant to a request that are in its custody or control. Speed and accuracy are essential in identifying, locating, retrieving and, where appropriate, copying records relevant to a request (where a request is for a large number of records, it may be appropriate to delay making copies).

Staff in search locations should be told to keep track of and report on the amount of time spent on locating and retrieving records. If the search is expected to involve a large number of hours, the FOIP Coordinator should be notified. The FOIP Coordinator may want to contact the applicant to discuss whether the scope of the request, and resulting fees, could be reduced.

Once the records have been located, either the program area or the office of the FOIP Coordinator should prepare them for review for responsiveness and the possible application of exceptions. In cases where the request is very clear, this may involve the copying and numbering of all records responsive to the request. Where the request is less clear, or where there are a large number of records, it may be appropriate to defer any copying until after the preliminary assessment by the FOIP Coordinator.

Disposition of records

Public bodies must not dispose of any records relating to a FOIP request after it is received, even if the records are scheduled for destruction under an approved records retention and disposition schedule.

This includes any e-mail and transitory records relevant to the request that may exist at the time the request is received. In effect, the receipt of a FOIP request freezes all disposition action relating to records responsive to the request until the public body has responded to the request, the Commissioner has disposed of any complaint or request for review, and all time limits relating to the exercise of rights by parties have passed.

For continuing requests, disposition action freezes at the point when the request is reactivated in accordance with the agreed schedule.

The file transmitting the request to the program area should include a reminder that it is an offence to destroy any record, or to direct another person to do so (**section 92(1)(g)**), or to alter, falsify or conceal any record, or to direct another person to do so (**section 92(1)(e)**) in order to evade a request for access to records. These offences are punishable by a fine of up to $10,000.

Where records have been destroyed prior to the receipt of a request, in accordance with an approved records retention and disposition schedule, the public body's response to the applicant should indicate that the records have been destroyed, quoting the relevant destruction certificate numbers for the records (see *IPC Order 99-021*).

When records have been transferred to the Provincial Archives of Alberta or the archives of the public body, the request should be transferred to the archives for processing, unless some other arrangement between the two organizations exists (see *IPC Order 96-022*).

Preliminary assessment

After the records have been retrieved, the next step is a preliminary review of the records by the FOIP Coordinator. In larger public bodies, the FOIP Coordinator might involve a program contact or other person knowledgeable about the subject matter and records.

There are a number of matters to consider at this stage.

- Does it appear that all relevant records, including electronic records, have been located and do they appear to respond to the request?
- Are there any records referenced in the request or the located records, such as attachments, that have not yet been located?
- Are any of the records excluded from the scope of the Act under **section 4** or subject to other legislation that prevails over the *FOIP Act*?
- Should all or a portion of the request be transferred to another public body that produced the record, was the first to obtain the record, or has the record in its custody or under its control?
- Does it appear that records may be found in program areas other than those already identified, and should the search be widened?
- Is consultation needed with other program areas within the public body? Responsibility for ensuring that these consultations occur should be clearly assigned.
- Is external consultation needed with other public bodies and levels of government? Responsibility for conducting these consultations should also be clearly assigned.
- Do the records contain third party business information or personal information that may require third party notification?
- Will the time required to respond to the request likely exceed the 30-day time limit? Are there grounds for an extension of the time limit?

- Will fees in addition to the initial fee (if applicable) be assessed for the processing of the request?

From this preliminary review, the FOIP Coordinator may, depending on the level of delegation, either recommend or undertake actions related to

- the transfer of all or part of the request;
- the extension of time limits;
- third party notification; or
- the assessment of fees.

Each of these activities involves a notice to the applicant. Notices are considered in this publication as follows:

- extension of time limits is discussed in section 3.3 of this chapter;
- third party notification is discussed in Chapter 5;
- transfer of requests is discussed in section 3.2 of this chapter; and
- assessing fees is discussed in section 3.5 of this chapter.

Notices

Various notices are required under the Act. Of particular importance are those that are sent

- to inform an applicant of a fee estimate;
- to report to an applicant about the progress of a request (e.g. any extension of the time limit for responding);
- to notify a third party (a business or an individual) that information provided by the third party or personal information about the third party has been requested, and that an opportunity is being provided for comment on whether the information should be disclosed; and
- to advise the applicant of the decision on the disclosure and, if access is being granted, provide information about access to the requested records.

Section 83 of the Act provides for the manner of giving notice. **Section 83** is discussed in section 2.6 of Chapter 2.

Public bodies should assess the circumstances requiring the notice and choose the most effective and economical approach. If a public body is sending a notice by fax or other electronic means, care should be taken to prevent unauthorized disclosure of third party information (see *IPC Investigation Report 2001-IR-001*).

The **Model Letters** in Appendix 3 provide examples and options for all the notices required under the Act.

3.5 Assessing Fees

The *FOIP Act* allows public bodies to charge fees to help offset the cost of providing applicants with access to records. The Act provides for a fee structure that is intended to support effective provision of FOIP services.

Section 93 establishes that

- a public body may require an applicant to pay fees for services as provided for in the FOIP Regulation (**section 93(1)**);
- for personal information, fees are restricted to the cost of providing a copy of the information (**section 93(2)**);
- if fees are required under **section 93(1)**, an estimate of the total fee must be prepared by the public body for the applicant before providing the services **(section 93(3)**);
- an applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of the estimated fees (**section 93(3.1)**);
- the head of a public body may excuse an applicant from paying all or part of a fee if, in the opinion of the head,
  - the applicant cannot afford the payment or for any other reason it is fair to excuse the payment; or
  - the record relates to a matter of public interest, including the environment or public health or safety (**section 93(4)**);
- the decision of the head of a public body on a fee waiver request must be communicated in writing to the applicant within 30 days of receiving the request for a fee waiver (**section 93(4.1)**);
- the fees referred to in **section 93(1)** must not exceed the actual costs of the services provided (**section 93(6)**).

Section 95(b) enables local public bodies to establish their own fee structures provided they follow **section 93** of the Act and do not exceed the fee structure set out in the FOIP Regulation. This must be done through a bylaw or, where applicable, other legal instrument by which the local public body acts.

GST is not charged on fees for processing FOIP requests.

Fees for general records

Section 11(4) and **Schedule 2** of the FOIP Regulation set out the maximum fees that may be charged for processing a general access request.

The head of a public body may require an applicant who makes a request under the Act to pay fees for the following services:

- locating and retrieving a record;
- producing a record from an electronic record;
- preparing a record for disclosure (to cover the time taken to physically sever the record);
- providing a copy of a record;
- creating a new record from an electronic record under **section 10(2)** of the Act;

- supervising the examination of an original record, and
- shipping.

No fee may be assessed for time spent in reviewing a record to determine whether or not all or part of it should be disclosed.

If new records have to be created from an electronic record, the public body may use acceptable industry standards to ensure accuracy and completeness of the records, process the information according to its usual procedures, and charge for these services as a part of its fee. If the public body uses a reasonable process, there is no obligation under the Act to change the process simply because an applicant believes a faster or more efficient method to complete the task may exist.

In the event of a review by the Commissioner, the public body has the burden of proving that it has reasonably calculated the fee estimate (see *IPC Orders 99-014* and *F2002-005*).

The fee provision is discretionary, but normally fees will be assessed for all general requests under the Act. Fee waiver provisions are set out in **section 93(4)** of the Act. The FOIP Regulation (**Schedule 2**) sets out the maximum fees that may be charged. Public bodies may choose to charge less than these rates, but not more.

A person who makes a request for access to a general record that is not a record of the applicant's own personal information is required to pay

- an initial fee of $25 at the time that a one-time request is made; or
- an initial fee of $50 when a continuing request is made.

This initial fee covers the work involved in registering the request, locating and retrieving records, and, in some instances, providing access to records. For simple, straightforward requests involving a small volume of records, it will be the only fee paid. For complex requests or requests involving a large volume of records, the initial fee would probably only cover the preparation of a fee estimate. Additional fees will likely be required.

No additional fees are charged unless the amount of fees required to process the request for general records, as estimated by the public body to which the request has been made, exceeds $150. When the amount estimated exceeds $150, the total amount is charged to the applicant.

Processing a FOIP request for general records must not commence until the initial fee has been paid.

Fees for personal information

Section 12 of the FOIP Regulation sets out the fees that an individual may be charged for accessing his or her own personal information.

In the case of a request for an applicant's own personal information, an applicant will pay only copying fees, and then only when those fees exceed $10, as determined by the public body in accordance with the rates established in **Schedule 2** of the FOIP Regulation. Subject to the fee waiver provision (**section 93(4)**), when the fee exceeds $10, the total amount will be charged to the applicant.

For more information on assessing fees when dealing with requests that contain both personal information and health information under the *Health Information Act*, see section 3.2 of this chapter.

Fee estimates

Section 13 of the FOIP Regulation governs the provision of fee estimates under the Act.

When a public body provides a fee estimate to an applicant in accordance with **section 93(3)** of the Act and **section 13** of the FOIP Regulation, the estimate should provide a breakdown of all applicable fees that will be charged to the applicant. The estimate should use the language of the Act and Regulation; for example:

- the time required and cost for searching for, locating and retrieving the record(s);
- the time required and cost for preparing and handling the record(s) for disclosure; and
- the cost of producing a paper copy of the record(s) in the required format (e.g. black and white up to 8½" x 14").

Where the Regulation allows for the "actual cost" of the service, the public body should indicate the basis on which it has estimated the actual cost (e.g. time required and rate per ¼ hour for computer programming).

In the case of a request for access to a record of the personal information of the applicant, the public body must only include the cost of copying the record.

In the case of a continuing request, the estimate must include the total fees payable over the time span of the continuing request (see *IPC Order 97-019*). The notice to the applicant about fees should include

- a request that at least 50% of the estimate be paid in advance of the request being processed, or in the case of a continuing request, a request that at least 50% of the estimate for the first instalment be paid in advance of the request being processed;
- a statement that the applicant has 20 days to inform the public body that the estimate is accepted and to pay the deposit; and
- a statement that the applicant has the right to ask the head of the public body to excuse all or part of the fee and may request a review by the Information and Privacy Commissioner if the fees are considered too high or otherwise inappropriate, or if a request for a fee waiver has not been granted.

Model Letter E in Appendix 3 may be used to provide this notice. The notice gives the applicant the basis on which to accept the fees or take other action. The applicant might narrow the request, review original records, which would incur supervision

costs but would cut down on copying costs, seek a fee waiver, or request a review of the fees by the Commissioner under **section 65(1)** or **section 53(2)**.

No further processing takes place until one of the following events occurs:

- a letter from the applicant agreeing to the charges and attaching payment of the deposit is received in the authorized office (the applicant has up to 20 days to accept the fee estimate);
- written notification from the applicant modifying the request, and establishing a new basis for assessment of fees, is received in the authorized office;
- the public body agrees to a request for a fee waiver; or
- the Commissioner carries out a review and decides whether the fees are appropriate, or whether the head of the public body has appropriately exercised his or her discretion regarding a request for a waiver of fees, as applicable.

An applicant has up to 20 days to indicate whether or not the fee estimate is accepted.

More detailed guidance on estimating fees is provided in FOIP Bulletin No. 1: *Fee Estimates*, published by Access and Privacy, Service Alberta.

Fee estimates are not binding. However, a public body should do its best to estimate what the fees will be. The public body can revise its estimate in the course of processing the request. If the estimate is too high, the public body must refund any fees paid by the applicant that exceed the actual cost of processing the request. If a fee estimate is too low, the public body has the discretion to request additional fees from an applicant. The fact that fees will be higher must be addressed with an applicant as soon as it becomes apparent, and not be left to the end of the processing period.

Deposits and payment of fees

Processing of a request ceases once a notice of estimate has been forwarded to an applicant and recommences immediately upon

- receipt of an agreement to pay the fee; and
- receipt of at least 50% of any estimated fee that exceeds $150 (FOIP Regulation, **section 14(1)(a)**) or, in the case of a continuing request, receipt of at least 50% of the portion of the estimate applicable to the delivery of the instalment of the request to be processed (FOIP Regulation, **section 14(1)(b)**).

The balance of any fee owing is payable at the time the records are provided to the applicant (FOIP Regulation, **section 14(2)**).

If the amount paid is higher than the actual fees required to be paid, the balance paid will be refunded. The initial fee is not refunded in these circumstances (FOIP Regulation, **section 14(3)**).

The applicant should not be provided with access to a record until all fees owing for the processing of the request have been paid (section 6(3) of the Act).

Local public bodies should arrange for fees paid under the Act to be handled in the same way as other revenue.

Government ministries must deposit revenue collected from FOIP fees to IMAGIS Account Code 446425.

Excusing or waiving fees

Section 93(4) provides that a public body may excuse the applicant from paying all or part of a fee (i.e. grant a fee waiver) if, in the opinion of the public body

- the applicant cannot afford the payment or for any other reason it is fair to excuse payment; or
- the record relates to a matter of public interest, including the environment or public health or safety.

Normally, an applicant will take the initiative in requesting a fee waiver, usually at the time of submitting the request itself. A public body must consider the request for a fee waiver from an applicant at the time it is made. If a request for a fee waiver is part of the FOIP request, the public body will consider it when it is preparing a fee estimate and decide whether or not the request meets any of the criteria for excusing fees and, if it does, whether or not a fee waiver is merited.

An applicant must make a request for a fee waiver in writing (**section 93(3.1)**).

The public body does not need to waive all fees if it decides to grant a request to excuse payment. It can consider reducing the fee by a part of its total or not charging for certain services.

If an applicant has requested a fee waiver, and the public body does not grant it, the public body must notify the applicant that he or she may ask the Commissioner for a review of this decision (**section 93(5)**).

The decision of the head of a public body concerning a request for a fee waiver must be communicated in writing to the applicant within 30 days of receiving the request for a fee waiver (**section 93(4.1)**).

When making a decision on a fee waiver request, the head of the public body must make the decision on a case-by-case basis. The head of a public body will not have properly exercised his or her discretion if a fee waiver request is denied on the grounds of a standing policy rather than on consideration of the merits of the individual case (*IPC Order F2006-001*).

The Commissioner may conduct a review of the decision by the head of the public body under **section 65(1)**. **Section 72(3)(c)** enables the Commissioner to make a fresh decision on fees in the appropriate circumstances, for example, where new evidence not available at the time of the public body's decision is presented by the applicant at an inquiry (see *IPC Order 2000-008*).

Grounds for excusing fees

Section 93(4) establishes the criteria for excusing payment of all or part of a fee.

Applicant cannot afford to pay

Section 93(4)(a) The head may excuse payment if the applicant cannot afford the payment. The onus of substantiating financial hardship falls on the applicant (*IPC Order 96-002*). The applicant may be required to supply documentation of income and expenses (*IPC Orders 99-012* and *2000-011*).

The public body should assure the applicant of the confidentiality and security of financial information submitted to the public body in support of a fee waiver request.

When making a decision on grounds of financial hardship, a public body may take into consideration a range of factors, including the scope of the request and amount of the estimated fee; whether the applicant is prepared to pay a portion of the fee; and whether the applicant is willing to work with the public body to narrow the scope of the request and to accept other options. *IPC Order 2007-016* provides a summary of the principles that apply to fee waivers based on financial hardship.

Other reasons why it is fair to excuse payment

Section 93(4)(a) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head, it is fair to excuse the payment for any reason other than financial hardship.

Section 93(4)(a) may be used by a public body when it wishes to grant a fee waiver on its own initiative.

The reasons to excuse fees on grounds of fairness may relate to any number of matters. The following are some examples of circumstances where the fees may be waived on grounds of fairness.

- The public body has assessed fees where the records provide little or no information (see *IPC Order 99-027*).
- The public body has failed in its duties in processing the access request, for example, by conducting an inadequate search for records or allowing undue delay (see *IPC Order 99-039*).
- More than one applicant made the same or a similar request at around the same time, and it would not be fair for the public body to collect the total estimated amount of fees from both applicants or to charge the first applicant substantially more than the second (see *Adjudication Order 2*).

Some of the following factors may also be relevant to a decision on fairness.

- The records are critical for the applicant to exercise his or her rights, or are directly related to an individual's personal financial or health management.
- A person has a legitimate reason to request the personal information of another individual, but cannot exercise that individual's rights under **section 84** (if the individual requested the information the request would be subject to copying fees only).
- If the public body set aside the fees associated with records that would likely be withheld, the fee would be likely to fall below the $150 threshold, or marginally above the threshold.

Record relates to a matter of public interest

Section 93(4)(b) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head, the record relates to a matter of public interest, including the environment or public health or safety.

The concept of public interest has been explained in a number of Commissioner's Orders (*IPC Order 96-002*; reiterated in *IPC Orders 2001-023* and *F2003-011*). The term "public" may be applied to *everyone* and *anyone*. The term "interest" can range between the sense of individual curiosity and the notion of interest as a benefit. The Commissioner has reasoned that the weight of public interest depends on a balancing of the relative weight afforded to curiosity and benefit, and to a broad versus a narrow public. The Commissioner has also said that public interest is not confined to environmental and public health and safety issues.

It should be noted that the criteria for determining public interest under **section 93** are not the same as for the Act's provision for disclosure in the public interest (**section 32(1)(b)**). **Section 32(1)(b)** overrides all other provisions of the Act, including its provisions for the protection of personal privacy. Public interest in **section 32(1)(b)** must be narrowly interpreted, limited to compelling public interest. **Section 93(4)(b)**, on the other hand, is intended to support access rights, and is therefore interpreted more liberally. (See *IPC Orders 98-011, 98-019* and *2000-031*.)

This category of fee waiver is generally appropriate where there is a public interest in disclosing all or part of a record. This occurs when the information is likely to contribute significantly to public understanding of the operations or activities of the public body, or is of major interest to the public, as in the case of information about the environment or public health or safety.

In *IPC Order 96-002*, the Information and Privacy Commissioner listed thirteen "criteria" for determining public interest. In *Order F2006-032*, the criteria were revised. There are now just three criteria; some of the original thirteen criteria have become "relevant considerations."

- Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

  The following may be relevant considerations:

- Have others besides the applicant sought or expressed an interest in the records?
- Are there other indicators that the public has or would have an interest in the records?

In *IPC Order F2007-020,* the uniqueness of the public body's program, the amount of public funds involved and the errors that allegedly occurred in administering the program were found to be indicators that the public has or would have an interest in the records. This weighed in favour of disclosure.

- Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public or a sector of the public?

  The following may be relevant considerations:

  - Do the records relate to a conflict between the applicant and government?
  - What is the likelihood the applicant will disseminate the contents of the records?

  The fact that a print media applicant would publish the information in the records was a factor that favoured disclosure. However, requests for a fee waiver by the media are to be determined on the specific facts of the case. Public interest and not public curiosity is the standard to be applied (*IPC Order F2007-020*).

- If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

  The following may be relevant considerations:

  - Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
  - Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
  - Will the records shed light on an activity of the Government of Alberta or a public body that has been called into question?

  The disclosure of records relating to security breaches and errors in the distribution of rebate cheques was desirable for the purpose of subjecting the activities of the government to public scrutiny, and shedding light on a process that had not been addressed in the government news releases or on the program website (*IPC Order F2007-020*).

Public bodies should consider these questions when exercising their discretion as to whether to waive or reduce fees. A public body may ask an applicant requesting a fee waiver in the public interest to provide information relating to any of the points that appear relevant to the records under consideration.

Section 93(4)(b) requires a public body to form an independent opinion about whether a record relates to a matter of public interest (see *IPC Order 2001-023*). A public body could determine, after considering all relevant facts and circumstances and the principles and objects of the Act, that a record relates to a matter of public

interest, even though the applicant may have failed to establish a public interest in the record (*IPC Order F2003-011*).

If the Commissioner conducts a review of a decision not to grant a fee waiver in the public interest, the public body may find it helpful to show that it applied these criteria in making its assessment.

Fee waivers are discussed in more detail in FOIP Bulletin No. 2: *Fee Waivers*, published by Access and Privacy, Service Alberta.

3.6 Abandonment of Requests

Often, it is clear when an applicant has decided not to pursue a FOIP request. An applicant will indicate either in writing or on the telephone an intention not to proceed with the request. This may be for a variety of reasons. For example, the applicant has found that the information is available outside the FOIP process or no longer needs the information.

Sometimes situations will arise where an applicant simply ceases to respond during the processing of a FOIP request. No indication is given that the applicant has decided not to pursue the request. He or she simply does not respond to queries from the public body.

When this latter situation occurs, **section 8** of the Act sets out provisions for declaring a request abandoned. The public body must have contacted the applicant in writing and either sought further information that is necessary to process the request or requested payment of or agreement to a fee.

If the applicant does not respond within 30 days of being contacted, the public body can advise the applicant, again in writing, that the request has been declared abandoned. A specific date for this declaration should be included in the notice. This notice must state that the applicant can ask for a review by the Commissioner of the decision.

In most cases, abandonment of a request occurs before processing of the request is completed. However, in some cases, an applicant abandons a request after processing is completed. If the public body has responded to the applicant's request, stating where, when and how access will be given; and has requested that the applicant contact the public body about viewing the records, and the applicant does not respond within 30 days, then the public body can advise the applicant that the request has been declared abandoned. The procedure outlined above will apply to such requests.

It is good practice for a public body to keep the file active for a further 60 days in order to allow time for the applicant to request a review by the Commissioner.

Model Letter F in Appendix 3 deals with this type of situation.

3.7 Processing a FOIP Request – Reviewing and Preparing Records for Disclosure

Line-by-line review of records

Once the preliminary assessment has been completed, the various administrative matters have been sorted out and any necessary consultations are under way, a knowledgeable staff member from the program area or, in centralized systems, the office of the FOIP Coordinator, will need to review the documents line by line.

A line-by-line review is essential to comply with the principle of severability set out in **section 6(2)** of the Act. This provision grants an applicant a right of access to any record from which excepted material can be reasonably severed. Chapter 4 deals with the guidelines for the application of the exceptions to the right of access.

With input from the program or business unit responsible for the records, the reviewer should be able to form an assessment of the likelihood of harm as a result from release of particular information and identify factors to be taken into consideration when exercising discretion to withhold information. During a line-by-line review, the office of the FOIP Coordinator may identify additional requirements with respect to third party notices or consultations.

Documentation

The reviewer should document exceptions to be invoked, actions to be taken, reasons for each decision, and recommendations for responding to the request.

A model **Access Request Processing Summary** is provided in Appendix 5. Public bodies may adapt this form for their internal use.

Thorough documentation at this stage will ensure that the public body has the information required to assess recommendations from the program area and to reach final decisions relatively quickly. Documenting the decision-making process minimizes duplication of effort and ensures that the public body is in a position to explain decisions both to the applicant and to the Information and Privacy Commissioner, if there is a request for a review.

Reviewer's recommendations

The reviewer should prepare a summary of recommendations that identifies

- specific records or parts of records that are excluded from the scope of the Act;
- specific records or parts of records to which mandatory or discretionary exceptions to disclosure apply, with the reviewer's recommendations and reasons with respect to the discretionary exceptions (for guidance on the exercise of discretion, see Chapter 4); and
- other general factors that may be pertinent in reaching a decision on a response to the request.

This summary will provide the basis for a discussion between the office of the FOIP Coordinator and the program area of recommendations for a report on the response. At this stage, any legal advice needed to resolve issues arising from the request should be sought. Also, any interpretative or policy issues that need to be raised should be identified and consultation undertaken.

The report should contain

- a log of staff time spent locating, retrieving, copying, and reviewing the records;
- a summary of file systems, offices, and records storage facilities searched;
- copies of records responsive to the request (where this is possible and appropriate given the volume of records or the fact that the applicant wishes to view the original records);
- documentation of the line-by-line review, identifying the specific information in the retrieved records that it is proposed to except from access;
- a summary of third party notices sent and responses received;
- a summary of results of consultations with other public bodies and levels of government; and
- a summary of recommendations for release or refusal, including brief background information to explain decisions.

The **Access Request Recommendation Form** in Appendix 5 serves as the authority to produce the response to the applicant and should be signed by the official delegated to make this decision on behalf of the public body.

Creating a new record

Under **section 10(2)** of the Act, a public body must create a new record from an existing electronic record if

- the record is in the custody or under the control of the public body;
- the new record can be created using the public body's normal computer hardware and software and technical expertise; and
- creating the record would not unreasonably interfere with the operations of the public body.

This is the only case where the *FOIP Act* requires a public body to create a new record.

An applicant may ask a public body to create a record from a record in electronic form for the purpose of obtaining information in a form that does not currently exist within the public body. For example, a public body may have a database management system that generates certain reports, but not a report of the kind wanted by the applicant. If the public body is able to produce a report setting out the information in the form requested by the applicant, the public body must do so, provided this can be done using the public body's normal computer hardware and software and technical expertise. The public body can charge for this service in accordance with **Schedule 2** of the FOIP Regulation.

A public body may determine how best to respond to the applicant's request. For example, the Information and Privacy Commissioner found that a public body's record-generating process was reasonable, even though the applicant believed that it was more time-consuming and thus more expensive than necessary. In that case, the public body had to locate the file and complete a verification process to ensure accuracy and completeness of the information (see *IPC Order 99-014*).

If a record cannot be created using the public body's normal computer hardware and software and technical expertise, the public body is not required to create the record. For example, a public body was not obliged to create an electronic copy of requested e-mail messages because exceptions applied to the records and the public body did not have the technical capacity to sever the records electronically. In that case, the public body was required to provide paper copies of the records (*IPC Order F2002-017*).

A public body is not required to create a record if to do so would unreasonably interfere with the operations of the public body. For example, the Commissioner found that a health care body was not required to create a record when that would require an extensive amount of time, a significant amount of staff resources, and would result in specialists being removed from patient care (*IPC Order 2001-016*).

In another situation, when an applicant requested an electronic record of information contained in computer logs, the public body determined that the computer processing would have a significant negative effect on the data centre. The Commissioner considered the detailed technical evidence and agreed that processing the request would unreasonably interfere with the operations of the public body. The Commissioner decided that the public body did not have to create any record, electronic or paper (*IPC Order F2002-017*).

The office of the FOIP Coordinator should consult with both the program and information technology areas to assess the time and resources that would be required to create the record and the impact that this use of resources would have on its day-to-day activities.

The creation of a new record from data that can be manipulated may have advantages for both the public body and the applicant in some instances. Excepted material can sometimes be easily suppressed, saving time-consuming severing procedures. The applicant is also often very satisfied with the information received because it is in a more usable or understandable form. However, an applicant may have concerns about the integrity of the data.

Care should be taken to explain the methods used to create a record and what information is being suppressed so that the applicant does not think that information is being manipulated to alter the record or place a different perspective on it.

Responsive information

Information or records are responsive to an applicant's access request if the information or records are reasonably related to the request (see *IPC Orders 97-020* and *2001-037*). A public body's response to a request should include all records that are reasonably related to the request and no records that are not relevant to the request. Non-responsive records should be set aside, and non-responsive parts of records should be identified before making working copies and before any severing of the copies.

A public body may wish to apply the following approach to determine which records may be non-responsive to the request:

- retrieve all records generally responsive to the request (i.e. everything related to the issue, question or topic);
- carefully analyze the text of the request and consult further with the applicant if necessary;
- carefully examine all retrieved records to determine which ones are reasonably related to the request; and
- set aside material that is clearly not on the topic of the request and records that fall outside an established date range, if there is one; identify any non-responsive parts of records.

Public bodies may have different approaches to the retrieval of records. However, it should not be necessary for the FOIP Coordinator to retain significant amounts of non-responsive material in the request file. Consideration should be given to returning anything that is clearly non-responsive to the program area.

A public body is entitled to treat the date of receipt of a request as the outer time limit for the access request. The Commissioner has said that it would be unworkable for an applicant to request an open-ended time frame (*IPC Order 2000-020*).

The fact that an applicant already has or knows the substance of the information, or has knowledge of the contents of a record, does not mean that the record can be considered non-responsive. The public body's obligation is to address the applicant's entire request (see *IPC Order 98-005*). However, a public body and an applicant may agree not to make copies of such records in order to save costs.

Removal of non-responsive information must occur before severing takes place using the exceptions in the Act (see *IPC Order 97-020*).

A public body can remove information as non-responsive only if the applicant has requested specific *information*, such as his or her own personal information. If an applicant asks for a record, then the whole record is generally considered responsive and any part of the record that is not to be disclosed must be severed on the basis of the exceptions in the Act (see *IPC Order 99-002*). Despite this general rule, the public body may treat portions of a record as non-responsive if they are clearly separate and distinct and entirely unrelated to the access request (see *IPC Order 99-020*).

Certain records that are identified as responsive to a request may be records that are excluded from the scope of the Act under **section 4**. If a public body chooses to provide access to excluded records, it should be made clear to the applicant that the records are outside the scope of the Act. For information about responding to a request involving excluded records, see section 3.8 of this chapter.

Severing information

Many records contain both information that can be disclosed and other information that may or must be withheld. When information that falls within an exception can reasonably be severed from a record, an applicant has a right of access to the remainder of the record (**section 6(2)**).

When a discretionary exception applies, a public body must use discretion not only in applying the exception, but also in determining how much of the information is severed. This is the reason for undertaking a line-by-line review of a record. The object of severing is the use of discretion to disclose as much information as possible, without causing the harm contemplated by the exception.

The only exception to this procedure is when using the exception for legal privilege. When legal privilege applies to a record, the whole record is withheld.

In *IPC Order 96-017*, the Commissioner discussed the two-step process a public body must follow when arguing for a discretionary exception in an inquiry. A public body must first provide evidence on how a particular exception applies, and second, how the public body exercised its discretion. A public body must show that it took into consideration all of the relevant factors when deciding to withhold the information. It must show that it considered the purposes of the Act, one of which is to allow access to information.

Information that must or may be severed

All records, regardless of format or previous actions taken, must be reviewed for exceptions and severed accordingly. The fact that an applicant may already have obtained copies of some of the records outside the FOIP request process does not eliminate the need for severing to respond to a request (see *IPC Order 98-016*).

When severing is required for information stored on specialized media, technical expertise should be sought as to the best way to excise information while recording that severing has been done and for what reason.

In some cases, a record cannot be severed (e.g. most records subject to legal privilege). The public body will have to refuse access to the whole record and must be prepared to demonstrate to the Information and Privacy Commissioner the technical reasons underlying the inability to sever. Examples include personal information of two or more individuals so intertwined in a record that severing would be extremely difficult, or when, after severing, the severed record would make no sense or is meaningless (see *IPC Orders 96-019, 2000-023*, *2000-028* and *2001-001*).

Procedures

During the line-by-line review of records pertinent to a request, the reviewer should identify portions of paper-based records that probably should be withheld, the section of the Act that supports the non-disclosure, and the rationale for using that exception. The reviewer should also keep notes about information in other media that may qualify for an exception. The review and severing of records may require a significant amount of time. The review procedure should ensure that all records responsive to the request are reviewed.

The objective in severing is to remove from the body of a record only the information that meets the conditions for an exception. The Act requires that all information in a record that is responsive to the request, and which will be intelligible to the applicant after severing, be disclosed.

The process is governed by reasonableness, and the public body exercises discretion in determining whether or not discrete portions of information contribute to the overall understanding of the subject matter at issue.

As a best practice, employees should be encouraged to draft documents with information that the public body may wish to except, such as recommendations and advice or personal data, segregated in particular parts of the document. This will make the severing process more efficient. Once the decision has been made to apply an exception to a record and a further decision is made regarding how much information will be severed, the office of the FOIP Coordinator can use one of the following severing methods:

- use of non-permanent white tape over the excepted portion of a copy of the record and recopying to obtain the record to be released;
- use of liquid eraser over the excepted portion of a copy of the record and recopying to obtain the record to be released;
- use of a photocopying machine with editing features suitable for severing; or
- use of redaction software to edit the severable information.

Whatever method of severing is selected, the office of the FOIP Coordinator must ensure that none of the excepted information remains visible. For this reason, the use of markers is not recommended.

Indication of severing

A public body that refuses access to a record or part of a record must tell the applicant the reasons for the refusal and the provision of the Act on which the refusal is based (**section 12(1)(c)(i)**). The public body must provide a description of the responsive records, without revealing information that has been withheld. At a minimum, the public body should tell the applicant the number of records withheld and the number of pages within each record. The public body must provide the section number of any exception used to withhold information (*IPC Orders F2004-026* and *F2007-013*).

Section numbers may be provided either in the space left after the severing or in the margin closest to the severed information. Where one or more entire pages have been removed, the public body must indicate the number of pages severed, along with the section numbers of the exception(s) used to sever the information.

In *IPC Order 2000-014*, the Commissioner found that a public body had not properly responded to the applicant under **section 12(1)** because it had not notified the applicant that 72 pages of records had been severed. In cases where a single page or a continuous sequence of pages has been completely severed, the exception(s) applied and the pages to which any exceptions were applied should be listed in the response letter or collated on a single page. It is neither necessary nor helpful to provide applicants with multiple blank pages.

In some cases, particularly cases involving law enforcement information or personal information about a third party, placing the section number in the space of the

severed information may itself reveal or imply information that, if disclosed, could cause harm to the law enforcement matter or be an unreasonable invasion of a third party's personal privacy. In these circumstances, a public body may omit section numbers on the severed pages and list the relevant exceptions to disclosure in the letter of notification.

Indicating why information was severed from records helps an applicant understand the public body's decision to refuse access to all or part of a record and assists in the event of a review by the Commissioner of the public body's decision. See IPC FOIP Practice Note 2: *Informing the Applicant of Grounds for Refusal*.

A public body that refuses to confirm or deny the existence of a record under **section 12(2)** is not required to tell the applicant the reasons for the refusal and the provisions of the Act on which the refusal is based.

Maintenance of copies

A public body should keep a file for each request processed. This file should include the original request, internal and external correspondence, an unmarked copy of the responsive records, and a copy of the severed documents released to the applicant. A third copy of the responsive records is also helpful to be used as a working copy.

This practice assists the public body in the event of a review by the Information and Privacy Commissioner. The file may also be helpful to the FOIP Coordinator with respect to requests for the same or similar records in the future. However, unless the new request is made shortly after the original, there is still a need to review the records again (see *IPC Order 99-021*). The passage of time and any changes in the context surrounding the records may result in more information being disclosed. Each FOIP request needs to be processed as a separate request and decisions need to be made in relation to the particular circumstances that apply at the time of the request.

This does not mean that every request is unique. A public body may recognize a pattern of similar requests and plan for them. It may be possible to create easily severable documentation that can be routinely disclosed. This might be done either because the information is in high demand or because disclosure of the information supports overall accountability for a program or activity. In some cases, active dissemination may also be warranted. See section 2.4 of Chapter 2 for further information on routine disclosure and active dissemination.

3.8 Responding to an Applicant

Section 12(1) of the Act provides that an applicant must be told

- whether access to the requested record or part of it is granted or refused;
- if access is to be granted to the record or part of it, where, when and how access will be given; and
- if access is to be refused, the reason for refusal and the section(s) of the Act on which this is based, the name and contact information of an employee who can explain the reasons for the refusal, and that the applicant may ask for a review of that decision by the Information and Privacy Commissioner.

In its response to an applicant, the *FOIP Act* does not require a public body to answer questions about the record or to clarify what is written. For example, in *Order F2002-025*, the Adjudicator found that the public body met its duty to an applicant when it gave the applicant complete, unsevered copies of the records he had requested.

When providing an applicant with access to his or her own personal information, a public body must be satisfied that the individual receiving the information is the individual the information is about or an authorized representative of that individual.

A public body should verify the identity of before giving an individual access to personal information (e.g. by asking for some form of valid photo identification, such as a driver's licence), especially if the information is at all sensitive.

For information on the exercise of rights by representatives, see section 2.5 of Chapter 2.

Responding to an applicant in relation to a public body's duty to assist under **section 10(1)** is discussed in section 3.2 of this chapter.

Model responses

The applicant must be provided with a response to a request. **Model Letters G**, **H**, **I**, and **J** in Appendix 3 provide guidance and options for drafting the various types of final responses to FOIP requests.

In all cases when access is refused, where the record is excluded from the Act, or where the public body refuses to confirm or deny the existence of a record, the response letter must state that, if the applicant requests a review of the decision by the Information and Privacy Commissioner, he or she should provide the Commissioner with

- the request number assigned by the public body,
- a copy of the decision letter, and
- a copy of the original request.

Although the Act does not require *written* notification of the right to request a review, the Office of the Information and Privacy Commissioner recommended that a public body revise its response letter to include this notification (see *IPC Investigation Report 2001-IR-004*).

Generally, the response letter should address the outcomes of the search and review of records in response to a request.

Record does not exist

If the public body cannot locate records responsive to the request, even after contacting the applicant to clarify or reformulate the request, a letter should be sent

informing the applicant of that fact and of the steps taken to attempt to find records. Where a record has been destroyed prior to receipt of the request, information should be provided on the date of destruction and the authority for carrying it out (e.g. the appropriate records disposition number or authorization).

Access is granted

If the public body determines that the information falls within the scope of the Act, and the information does not qualify for any exception, or that it qualifies for a discretionary exception but the public body has used its discretion in favour of disclosing the information, the letter to the applicant will say that access is granted.

Some requests will involve records that take little time to review or are easily disclosable. In these instances, the public body may disclose available records as soon as possible, rather than waiting until all records are ready for disclosure. This situation may occur when some records are ready for disclosure and other records have been sent to third parties for consultation.

When records are disclosed in stages, it may not be clear when the 60-day period for requesting a review by the Commissioner would begin. The Commissioner has not commented on this issue to date, but it should be noted that the *FOIP Act* does not contemplate partial or interim disclosure. Under **section 12(1)(c)**, if some of the records disclosed early have been severed, the applicant must be told that he or she has a right to ask for a review of the decision to apply an exception.

Arguably, the time period under **section 65** for requesting a review of that decision would begin when the applicant has been notified of the decision to disclose some records on an interim basis. However, in the interests of providing the applicant with the longest opportunity to request a review of any decision regarding disclosure of records, it is likely that the Commissioner would determine that the 60-day review period would commence on the date on which the public body sends notice to the applicant of its decision regarding the final disclosure of records.

The applicant will have indicated, in accordance with **section 7(3)** of the Act, whether he or she wishes a copy of the record or to examine the original record. If the request is for a copy and it can be reasonably reproduced, **section 13(2)** of the Act requires that the copy be included in the package. This will be done only if the balance of the fees has been paid.

A public body must collect all outstanding fees before releasing the records to the applicant.

See section 3.5 of this chapter for information on assessment of fees.

If it is not possible to include the records with the response letter, **section 13(2)(b)** requires that the applicant be given the reason for the delay and told where, when and how the copy will be provided. The most likely cause of delay is that the applicant must pay outstanding fees before access is provided.

In some instances, the applicant may have asked to examine a record but the record cannot be reasonably severed for examination, or the record is in a format that does not readily lend itself to examination (e.g. a microfilm with much excepted material on it). In these instances, the public body may choose to provide a copy of the record to the applicant. **Section 4** of the FOIP Regulation covers these situations.

A public body cannot attach conditions to the disclosure of records or control the use of those records after disclosure. However, other laws may apply to subsequent use of the information.

Excluded records

If the public body determines that all or some of the records are excluded from the scope of the Act under **section 4**, the public body should notify the applicant that the record or information is excluded and that the applicant cannot obtain access to the record(s) under the *FOIP Act*. The letter should cite the specific exclusion in **section 4** that applies, and state that the applicant has the right to ask the Information and Privacy Commissioner to review the decision of the public body that the specified exclusion in **section 4** of the Act applies.

A record responsive to a request may be excluded from the application of the Act, but a public body may nevertheless choose to provide access to it outside the Act. In such cases, a public body should consult with any affected parties. For example, if the record was created by or for an Officer of the Legislature or an MLA, the Officer of the Legislature or the MLA concerned should be consulted.

In instances where access is provided to an excluded record, it is important that the letter of response inform the applicant that the record is excluded, citing the provision of **section 4** that applies, and indicating that the public body has chosen to provide access to the record outside the Act.

Access refused

If the public body determines that the information falls within a mandatory exception, the information falls within a discretionary exception and the decision is to refuse access, or the information lies outside the scope of the Act, the response letter to the applicant should state

- the reasons for refusal and the sections (i.e. the specific subsections and paragraphs) on which the refusal is based;
- the name, title, business address and business telephone number of the FOIP Coordinator or other official who may be able to answer questions the applicant may have; and
- that the applicant has the right to request a review of the decision under **section 65(1)** of the Act and that this request must be made within 60 days after notification of the decision (see *IPC Order 2000-014*).

Refusal to confirm or deny existence of record

In certain cases, a public body may believe that an applicant's knowledge that a record exists may cause harm to a law enforcement matter (**section 20**), may pose a danger to an individual's or the public's safety (**section 18**) or would be an unreasonable invasion of a third party's personal privacy (**section 17**). **Section 12(2)** of the Act permits the public body to refuse to confirm or deny the existence of a record in these cases (see *IPC Orders 98-009, 2000-004* and *2000-016*).

Section 12(2) does not apply to records protected by other exceptions, such as the legal privilege exception (see *IPC Order 2000-015*).

If a public body refuses to confirm or deny the existence of a record containing information specified in **section 12(2)**, the public body does not have to tell the applicant the exception(s) it relied upon to refuse to confirm or deny the existence of the record. However, in the event of a review by the Commissioner, the public body would be required to provide the Commissioner with information regarding which exceptions it relied upon (see *IPC Order 2006-012*).

If the Commissioner is asked to review the public body's decision, the Commissioner must not disclose whether the information exists. In cases where **section 12(2)** has been applied improperly, the Commissioner has ordered the public body to respond to the applicant's request without relying on **section 12(2)**.

Request file

When a public body has responded to the applicant, the FOIP Coordinator should ensure that the public body request file is complete and includes

- all internal and external correspondence;
- copies of records reviewed;
- copies of all records that were released, either severed or complete, to the applicant; and
- any other information documenting the request management process.

3.9 Completion of Request and Closure of Request File

Completion of request

For the purposes of tracking a request and ensuring that the time limits under the Act are met, the processing of a request is complete when the public body has sent its response under **section 12(1)** to the applicant.

However, from a records management perspective, the request file would not be closed until after any balance of fees owing is paid and, if access is granted, the records have been disclosed to the applicant.

Although a request file may be closed after records have been disclosed, the retention period for a request file would only begin after the last recorded activity on the file. It is therefore a good practice to keep a request file active for 60 days after the response has been sent to the applicant in order to allow time for a request for a review by the Information and Privacy Commissioner. If a review is requested, the file will be reopened and remain open until the review process is complete. In the same way, if a

public body sends a notice to an applicant declaring a request abandoned, the file would not be closed and the retention period would not start until after the time period for requesting a review of that decision has passed.

Closure of file

The following may help in determining when an access request file is completed for the purposes of tracking the request, and when the request file may be closed for records management purposes. For a more complete discussion on determining when an access request file is completed after a third party notice process has begun, see Chapter 5.

When an applicant abandons or withdraws an access request, or the request can be processed outside the Act, the request is considered to have been completed on the date the public body sends a letter to the applicant confirming that the applicant has withdrawn the request, declaring the request to be abandoned, or advising the applicant that the request will be handled outside the Act.

When there are no records responsive to an access request, the request is considered to have been completed on the date the public body notifies the applicant in writing that there are no responsive records.

When an access request does not require a notice under **section 30**, the request is considered to have been completed on the date the public body notifies the applicant in writing of its decision under **section 12(1)** (the date on which the letter setting out the public body's decision is sent to the applicant).

When notice is given under **section 30** and the public body decides not to grant access, the request is considered to have been completed on the date the public body notifies the applicant of its decision pursuant to **section 31** (the date on which the letter setting out the public body's decision is sent to the applicant).

When notice is given under **section 30** and the public body has notified the third party and the applicant that it has decided to grant access, the request is considered to have been completed on the 21st day after that notice, if it is determined that the third party has not requested a review, when the records subject to the third party notice could be disclosed to the applicant.

When notice is given under **section 30** and the public body has notified the third party and the applicant that it has decided to grant access, and the third party requests a review of this decision, the file is not considered closed. The retention period for the file does not begin until the matter has been resolved through the review process (e.g. the public body has been notified that mediation was successful). If the Commissioner issues an Order following an inquiry, the file is not closed until the Commissioner confirms that the public body has complied with the order. If the public body disagrees with the Order and applies for judicial review, the file is not closed until the judicial review process is completed, any reconsideration by the Commissioner is completed, and the public body has complied with any order.

Retention of file

Once the file is closed, as indicated above, the public body must retain the file for at least one year to meet the retention requirements of **section 35(b)** of the Act. There may be value in keeping some request files for longer than one year if, for example, the issue that prompted the request is ongoing or key process decisions are noted in the file.

In addition to meeting the requirements of the *FOIP Act*, a public body must also comply with its records retention and disposition schedule. For public bodies that are subject to the Records Management Regulation under the *Government Organization Act*, this is the *Administrative Records Disposition Authority* (ARDA), published by Records and Information Management, Service Alberta, or another schedule approved by the Alberta Records Management Committee (ARMC).

Local public bodies must not transfer, store or destroy request records except in accordance with a bylaw, resolution or other legal instrument by which the local public body acts, or, if no such instrument exists, except as authorized by the governing body of the local public body (**section 3(e)**).

Under **section 92(1)(g)**, it is an offence to wilfully destroy any records subject to the Act, or direct another person to do so, with an intent to evade a request for access to the records. A person who contravenes this section is guilty of an offence and liable to a fine of not more than $10,000.