

Frequently Asked Questions (FAQ)

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Abandoned Requests

Q: I received a request where I issued a fee estimate. A month has passed since I notified the requester about the fees and I haven't had a response. Can I close the request?

A: The Act does not discuss how to deal with abandoned requests, therefore it is reasonable that common sense and good customer service should be your guiding principles. You have already waited a reasonable length of time for a response from the requester. We suggest that you now inform the requester that if you do not hear from them within a specified period, you will consider the request closed. You can use this technique for any process issue that needs to be resolved by the requester before you can proceed with processing of a request. Simply send a letter explaining what input you need and advising that the file will be closed by (a date a reasonable time in the future) if you do not hear back from them with the necessary information. To properly document your notice, you may wish to consider sending it by courier or registered mail where the recipient has to sign to acknowledge receipt.

Requirement to Sever

Q: I understand that as an institution, when we receive a request for paper records under M/FIPPA, we are required to sever them in order to disclose as much requested information as we can. Do we have the same requirement to sever non-paper records?

A: Yes. Whenever practicable you should sever records in other formats in order to provide as much access as you can. In Order PO-2056-I the IPC ordered the severing of a videotape to disclose only the audio portion in an attempt to balance competing interests of compelling public interest and the personal privacy exemption. In Order PO-2063-R the IPC ordered to the institution to sever photographs in order to render their subjects unidentifiable and therefore releasable. Where severing the record requires specialized expertise not available in your institution, you can usually pass on the receipted costs as set out in sections 6(1) and 6.1(4) of R.R.O. 1990, Reg. 460 under FIPPA or sections 6(1) and 6.1(4) of R.R.O. 1990, Reg. 823 under MFIPPA. To be safe, make sure the requester has agreed to your use of the external specialized expertise before you proceed.

Fees for Exempt Records

Q: I have a request where there will be a lot of search time and responsive records but no access to the records because exemptions apply. Can I charge a fee?

A: Yes. According to the regulations you are entitled to charge for search time. However, a suggested approach to large requests (ie requests with estimated fees of \$100 or more) is to use a representative sample of responsive records to estimate the expected total fee which you can issue with an interim access decision. The interim decision tells the requester how much access they can expect if you process the request. If you wish, you can request a deposit of 50% of the estimated fee before you proceed with processing of the request. The work required to produce the fee estimate will give the requester an idea of whether they wish to proceed and will save you work processing the request if the requester does not want to proceed in the face of the estimated fees. If the fee for the request is under \$100 (about 3 hours of search time you might wish to consider waiving the fee under S. 8 of either RRO 1990 Reg. 460 or 823 (the fees regulations). Ordinarily, it is appropriate to waive fees where the requester is not granted access to requested records. However, it may be acceptable to charge a requester a fee where the decision clearly indicates that no access will be granted but the requester insists that processing of the request proceed nonetheless.

Contract disclosure

Q We have a contract with a courier service with payment on a monthly basis based on use. If a third party requests information on what we pay the courier for service, are we required to disclose this information to the third party? Do we suggest they contact the courier company themselves and leave it up to them?

A. You have correctly identified the contract information as third party (S. 17/10). Since you are an institution covered by FOI legislation and the courier company is not covered by FOI legislation, you must respond to the request for any responsive records in your custody or under your control. When reviewing the records relating to this request you may have questions about whether any of the requested information qualifies for the third party exemption. If that is the case, you should contact the courier service for their input as outlined in the third party notification process (S. 28/21).

Statistics for Commissioner's Annual Report

Q For the FIPPA/MFIPPA year end reports that are requested, who requires this information, what information is required to be documented and why?

A The Information and Privacy Commissioner collects information on an annual basis in order to review the access and privacy compliance of institutions in its annual report. This information is required under S.34(1)/26(1) of the Act, which also outlines the

necessary information. You may find the statistical data collection form on the IPC website at: www.ipc.on.ca

Record Definition

Q Is an institution required to provide electronic records in printed form when requested?

A The definition of a record encompasses both electronic and paper format with the exception of when producing an electronic record would unreasonably interfere with the operations of the institution (Reg 460(2)/823 s1). As a matter of customer service, if a customer prefers one format over another, and it is not disruptive for the institution to do so, it should seriously consider granting the request. Regulation 823 Sections 6 & 6.1 allow an institution to charge \$15.00 for each 15 minutes spent developing a computer program to produce a record from a machine readable record and the same sections allow for a charge of 20 cents per page for computer printouts.

Third Party Disclosures

Q Under what circumstances would we, as an Institution be required to advise a third party that we would be disclosing information that we received from the third party?

A A Third Party can be either a person whose personal information has been requested by another (s.21/14 exemption) or an organization whose information has been requested where that information meets certain criteria under S.17/10.(in other words the IPC's 3 part test under S. 17/10). Section 28/21 of the Act outlines how and when a third party should be contacted upon receipt of an access request. Generally speaking whenever you are considering whether to disclose third party information, you should consult with them in making your decision.

Information Soon to be published

[Section 22 FIPPA/ 15 MFIPPA](#)

This exemption is not limited to information published only by the institution.

This exemption should not be applied to inadvertently prevent or limit the public's access to information. For example, an institution should not enter into an arrangement with a private business to provide access where to do so would have the real potential to inhibit the public's right to access because of extraordinary costs or physical restrictions to access.

An institution has a duty to inform a requester where the record or information in question is available.

The records must be available to more than just specific sectors of the public to satisfy this exemption

The purpose of this exemption is related to matters of convenience. Where an institution invokes this exemption, it must consider the convenience of the requester compared to the convenience of the institution. (such as how easily accessible or readily available these records are to the public)

The fact that records are only available to the public at a specific location is not, in and of itself, an indicator that they are not available to the public through a regularized system of access

This section is consistent with an alternate fee system where institutions charge fees for records available through a regularized system of access, however fees should fairly recover the costs of producing records.

The compelling public interest exemption in [s.23](#) FIPPA / [s.16](#) MFIPPA does not apply to this exemption.