

# Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) – Learning the Ropes

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# Agenda

- MFIPPA - Fundamental Concepts
- FOI Requests – Receiving and Processing Requests
- Briefing Notes, Exercising Discretion, Decisions Letters and other Processing Tips
- Exemptions
- The Information and Privacy Commissioner
- Privacy
- Privacy Breach Management

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# MFIPPA - Fundamental Concepts

- Purpose
- Time Limits
- Records
- Custody or Control
- Exclusions
- Severance
- Frivolous & Vexatious



# MFIPPA - Fundamental Concepts

## Purpose

- a) To provide a right of access to information,
- Information should be available to the public,
  - Exemptions should be limited and specific, and
  - Decisions should be reviewed independently of the institution; and
- b) To protect the privacy of individuals with respect to personal information.



# MFIPPA - Fundamental Concepts

## Purpose

ACCESS

/

PRIVACY

# MFIPPA - Fundamental Concepts

## Time Limits

- 30 days begin upon receipt
- Day received is actually “day zero”
- Received after hours => received on the next business day
- Expiry on a weekend or stat => expiry on the next business day
- No decision in 30 days = deemed refusal and APPEAL!





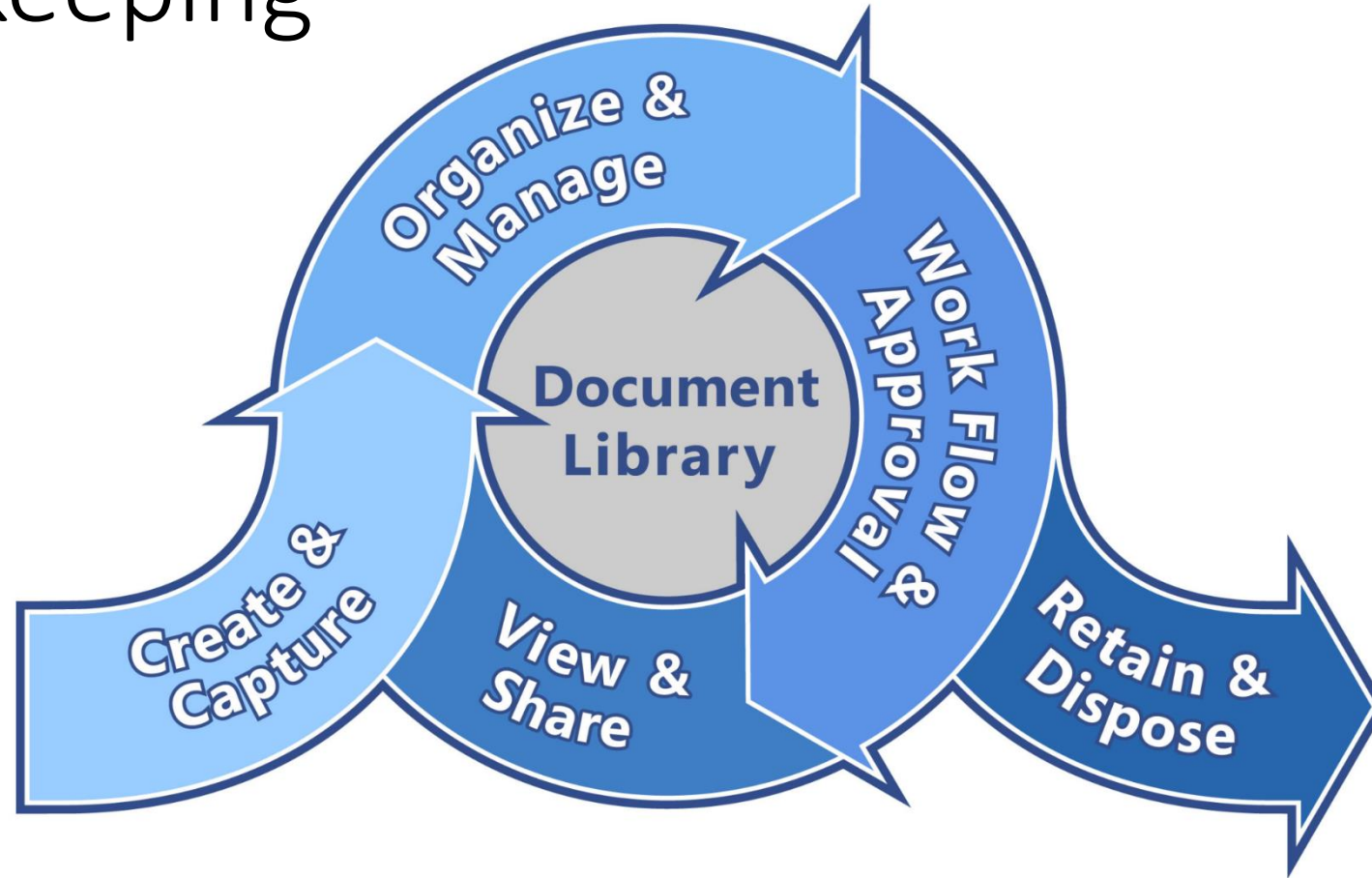
# MFIPPA - Fundamental Concepts

## What is a Record?

Record is defined as any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes:



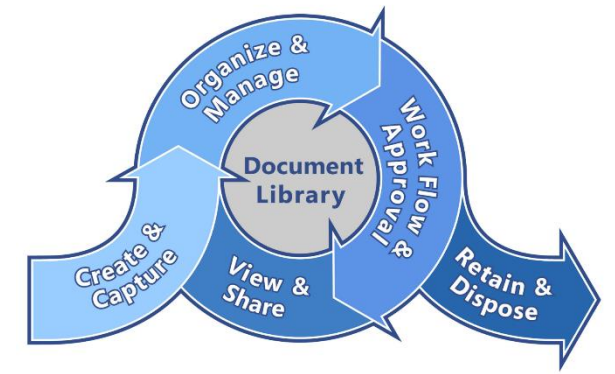
# MFIPPA - Fundamental Concepts Recordkeeping



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# MFIPPA - Fundamental Concepts Recordkeeping

- Manages a Valuable Corporate Asset
- Supports Decision Making
- Supports Government Transparency
- Minimizes Litigation Risks
- Ensures Regulatory Compliance
- Controls Creation/Growth of Records



# MFIPPA - Fundamental Concepts

Time for a test ... ALREADY!

1. A text message conversation between Judy and Andrew on their institution issued smart phones talking about a really difficult client – is this a record?
2. The iPhone video of the year end office party – is this a record?
3. Billy has a brainwave in the washroom and grabs the nearest available paper product to jot it down – Is this a Record?

# MFIPPA - Fundamental Concepts

## Custody OR Control

The right of access only applies where the records, in whole or in part, fall within the custody or control of an institution.

### Custody

- means the keeping, care, watch, preservation or security of the record for a legitimate business purpose.

### Control

- means the power or authority to make a decision about the creation, use, disposal or disclosure of the record.

# MFIPPA - Fundamental Concepts

## Custody or Control & Third Party Records

Who or What can be a Third Party? Who is not?

Examples of Third Party Records include:

- Records that have been provided under legislated and regulatory requirements;
- Records including the personal information of individuals applying for benefits or services;
- Records collected as part of a procurement of products or services;
- Records containing expert and legal advice,
- Records gathered during public consultations,
- Records created through federal-provincial-municipal initiatives, and
- Records created through public-private sector partnerships.



# MFIPPA - Fundamental Concepts

## Custody or Control & Third Party Records

- Who owns the record?
- Who paid for the creation of the record?
- What are the circumstances surrounding the creation, use and retention of the record?
- Is there a contract between the institution and the organization or individual who created the record?
- Was the individual who created the record an agent of the institution for the purposes of the activity in question?
- What is the customary practice of the individual who created the record in relation to possession or control of records of this nature, in similar circumstances?

# MFIPPA - Fundamental Concepts

## Exclusions

- MFIPPA does not apply to certain types or classes of records.
- Exclusions are intended to be limited in scope.
- MFIPPA does not prevent access to excluded records.
- If an institution decides to release an excluded record, it can do so “outside” of the legislation. However, this approach means that other rights (e.g., appeal rights) are not available to the requester.

# MFIPPA - Fundamental Concepts

## Exclusions

- Private donations to archives
- Prosecution records
- Labour relations and employment-related



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# MFIPPA - Fundamental Concepts

## Severance

There is no  
conspiracy  
everything is  
fine trust  
your  
government.

# MFIPPA - Fundamental Concepts

## Frivolous & Vexatious Request

Under the regulations, a frivolous or vexatious request occurs where:

1. The request is part of a pattern of conduct that amounts to an abuse of the right of access;
2. The requester is acting in bad faith or for a purpose other than access; or
3. Responding to the request would interfere with the operations of the institution.

# MFIPPA - Fundamental Concepts

## Frivolous & Vexatious Request

According to the IPC, examples of abuse of process include using the request process to:

- Make repeated requests for the same or similar information;
- Make an excessive number of requests;
- Resubmit a request previously abandoned;
- Make requests that are excessively broad in scope or unusually detailed;
- Coincide with the timing of other events (e.g., court proceedings); or
- Accomplish an objective unrelated to the process (e.g., harass, cause a nuisance, break or burden the system).



# FOI Requests – Processing



1. Receiving a Request
2. Assessing a Request
3. Searching and Locating Records
4. Reviewing and Analyzing Records
5. Finalizing Recommendations and a Decision
6. Preparing and Sending Records
7. Closing the File

# Processing: Receiving a Request

1. Review the request to ensure it is complete
  - \$5
  - Request is in writing, with sufficient detail
2. Open a File
3. Acknowledgement Letter
4. Notify the program area

Add
 Edit
 Delete
 Undo
 Save
 Print
 Letters
 List

[Search](#)

Requester:  \*  
 Agent:   
 Address:   
 City/Prov:  Postal Code:   
 Phone:  Ext.:  Mobile Phone:   
 E-mail:  Fax:   
 Summary:

Request #   
 Start Date:   
 Due Date:   
 Days Remaining:   
 Status:   
 Assigned to:  v  
 Priority:

[Main](#)
[Transfer In](#)
[Deposit](#)
[Search  
Memos](#)
[Forward To](#)
[3rd Party](#)
[Disp/Exempt](#)
[Fees](#)
[Decision/Close](#)
[Notes/Prep](#)
[Documents](#)

Classification

Request Received

 \*

Method of Access

 v \*

Request type

 v \*

Request Source

 v \*

Application Fee

Date Requested

 \*

Date Received

Amount

Clarification

Date Requested

Date Received

Time Extension

Extension (Days)

Extension Reason

 v


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# Processing: Receiving a Request

## Maintaining the Confidentiality of the Requester

The identity of a requester (a “natural person”) is personal information and therefore must not be shared except to those employees that require the name to undertake their duties and responsibilities (e.g. conduct a record search)

Requester – Professional capacity?

# Processing: Receiving a Request

Verifying the identity of a requestor

## **Institution:**

Regulation 460/823 subsection 3(3):

- A head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it

## **Requester:**

Section 61(1)(c)/48(1)(C):

- No person shall make a request under this Act for access to or correction of personal information under false pretences

# Processing: Receiving a Request

## Recommendations:

- Remove requester's name and other identifying information prior to circulating request - or transcribe the request
- When preparing status reports use general categories to identify source of request (e.g. "individual", "law firm", "business", "association", "political", "media")
- IPC concerned that disclosing even the identity of a corporate entity could influence the processing of the request
- For personal information requests ensure requester's identity is shared only on a "need to know" basis



# Processing: Assessing the Request

- Forwarding Requests
- Transferring Requests
- Clarification
- Contentious Requests
- FOI Files



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# Processing: Assessing the Request

## Forwarding Requests – s.18(2)

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control **SHALL** make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

# Processing: Assessing the Request

## Transferring Requests – s.19(3) and (4)

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head **MAY** transfer the request and, if necessary, the record to the other institution

# Processing: Assessing the Request Forwarding / Transferring

Institution forwarding/transferring the request notifies the requester and provides the name(s) and contact information of Coordinator(s) in other institution(s)

Institution should not advise the requester to submit separate requests to other institutions – required to make necessary inquiries and forward (P-1268)

# Processing: Assessing the Request

## Transferring Requests

- **Mandatory** obligation to forward requests ... Transfer of requests is **discretionary**
- Make all “necessary inquiries” when considering forwarding requests
  - Institution receiving forwarded/ transferred request should also consider if other institutions may have records
- “Clock” starts when request received (not upon forward/transfer)

Forward/transfer requests immediately & contact receiving institution to discuss

Fax/email request (protect requester ID) and follow-up with formal transfer

Confirm with requester in writing

# Processing: Assessing the Request

## Transferring Requests

When beyond 15 days consider:

- Can request still be responded to within 30 days (discuss with receiving institution)
- Inform requester of other institution and advise additional request could be sent
- Forwarding/transferring only between institutions subject to FIPPA/MFIPPA



# Processing: Assessing the Request Clarification

- Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the Act.
- Generally, ambiguity in the request should be resolved in the requester's favour (Orders P-134, P-880, MO-2399 etc.)

# Processing: Assessing the Request Clarification

Many IPC orders have established that when an institution that receives a broadly worded request it has three choices:

1. Respond literally to the request;
2. Request further information from the requester; or
3. Narrow the search unilaterally

# Processing: Assessing the Request Clarification

The “clock” sets to “day one” on date clarification agreed to

Must be mindful of distinction between “clarification” and “narrowing”  
– a request requires “clarification” when there is not enough detail to initiate a search

“Narrowing” (e.g. reducing time frame) does not reset the “clock”

# Processing: Assessing the Request Clarification – Strategy

Call requester as early on in the process as possible

If possible (time permitting) call even if no clarification is necessary

Explain the process – educate on possible future steps (e.g. notice, fee estimate)

Where appropriate establish expectations regarding release

With “difficult requesters” be professional/polite

Avoid government jargon

# EXERCISE

Your institution received the following request:

“I am seeking access to records relating to the government’s ‘keen on green’ initiatives”.

What initial steps would you take in responding to this request?  
keeping in mind the following:

- Waste Management started the Keen on Green Committee, however it has members from across the institution, including satellite offices;
- The Committee was established in 2000;
- The Committee publishes a quarterly internal report respecting its activities for staff, and;
- Reports annually to Council.

# Processing: Assessing the Request

## Contentious Requests

Some requests require issues management

Contentious requests may be defined by:

- Source - e.g. media, political, advocacy group
- Type of Records Requested

On receipt provide “heads up” to key staff including senior executives, communications staff, legal

# Processing: Assessing the Request FOI Files



- All request processing documents should be retained in an FOI file including:
  - Copy of the request
  - All correspondence with requestor, staff and third parties (acknowledgement letters, notices, decision letter etc.)
  - Relevant emails
  - Briefing material
  - Responsive records
- Is this included in your retention schedule?





# Processing: Search and Locating Records

The institution is required to produce all records responsive to a request

However...

Search activities must meet a standard of “reasonableness”

# Processing: Search and Locating Records

The following are the essential steps that should be taken into consideration in order to conduct a reasonable search.

- Clearly understand the search parameters
- Initiate the record search and ensure all relevant documents are retained
- Identify staff to conduct searches
- Provide clear search instructions
- Identify all databanks and places to be searched and develop a search plan
- Document search steps

# Processing: Search and Locating Records

- Assign program area/department contacts and train them
- Confirm with program area(s) that they have a clear understanding of the terms of the request prior to initiating search
- Develop a form for use by program areas when conducting searches that documents search steps and time taken
- Become familiar with your institution's retention schedules
- Retention schedules can provide proof records no longer exist
- Keep your institution's Directory of Records entries up-to-date (legal requirement)

# Processing: Reviewing and Analyzing

1. Preliminary Review – Program area staff
  - Work with program staff
  - Recommendation Form
2. Detailed Records Review
3. Consultation and additional steps:
  - Time extension
  - Consultations
  - Notification of affected persons

# Processing: Reviewing and Analyzing Time Extensions

Time extensions are permitted for two reasons:

1. When requests that have a high volume of records to search or review and the extensive search and review would unreasonably interfere with operations; and
2. When requests require consultations with a person or organization outside the institution in order to complete the request.

# Processing: Reviewing and Analyzing Time Extensions

Factors generally found to support a time extension include:

- Voluminous request; and
- Prepare records at a critical operational time.

Factors generally found not to support a time extension include:

- The number of requests being processed at any given time;
- Staff vacation;
- The expense of producing a record.



# Processing: Reviewing and Analyzing Voluminous Request

- A search through a large number of records;
- The review of a large number of responsive records;
- The coordination of searches through multiple program areas in the institution;
- Potential interference with the institution's operations; or
- The requirement of additional staff or resources to complete the request.

# Processing: Reviewing and Analyzing Consultations

The purpose of consultations is generally to obtain information or advice that can inform decision-making. Consultations are different from providing notices to affected persons as discussed below.

Consultations may be required with a person (e.g., past employee) or organization (e.g., other governments) outside the institution who may have knowledge of the records at issue. For example, a consultation may be required when responsive records to a request include records prepared by another government body and subject matter expertise is required in order to make a decision on access.

The legislation allows a time extension for consultations that is reasonable in the circumstances.

# Processing: Reviewing and Analyzing Continued Access



A requester can make a request and seek continuing access to the records for a period of up to two years.

This is intended for records that are produced on an ongoing basis

# Processing: Reviewing and Analyzing Notifying Affected Persons

A notice to the affected person must include the following information:

- A statement of intent;
- The contents that relates to the affected person;
- That the affected person must make representations in writing; and
- 20 days.

# Processing: Reviewing and Analyzing Notifying Affected Persons

- After the 20 day the institution has 10 days to issue a decision on access to the requester.
- The affected person has a right to appeal the institution's decision, so:
- Wait 30 additional days to disclose.
- Disclose non-third party records accordingly
- The timelines stated above may be extended if the 20 day response time presents a “barrier” as defined by the Accessibility for Ontarians with Disabilities Act.

# Processing: Reviewing and Analyzing Fee Estimate and Interim Decision

Fee Range	Must complete work	Issue fee estimate	Require a deposit	Issue interim access decision	Issue a final decision
\$25 or less	Yes	No	No	No	Yes
Over \$25 and Under \$100	Yes	Yes	No	No	No
\$100 or more	No – Review a representative sample only	Yes	Yes – 50% deposit before taking further action	Yes	Yes

# Processing: Reviewing and Analyzing

Staff should now:

- Consideration of exemptions
- Research IPC orders and judicial review case law
- Review previous decisions they have made regarding access to similar records
- Records Index

# Processing: Recommendations and Decisions

## Prepare a Briefing Note/Memo

- Background
- Description of records
- Analysis
- Exercise of discretion
- Recommendation





# Processing: Recommendations and Decisions

## Exercise of Discretion

- Principle Purposes of the Act
- The Wording of the Exemption and the Interests it Seeks to Protect
- Whether the Requester is seeking access to His/Her own personal information
- Whether the Requester has sympathetic or compelling need to receive
- Increase Public confidence in the operation of the institution
- Extent to which the information is significant or sensitive to the institution
- Age of the Information
- Historic practice

# Processing: Recommendations and Decisions

## Memorandum to the Clerk

CONFIDENTIAL	
Date:	Thursday, April 07, 2016
From:	Raciocot, Kristine
To:	Ralph Walton, Regional Clerk
Subject:	MFIPPA Request, Access Recommendation
File:	M.2016.007

**SUMMARY** The requester is a lawyer seeking access to the Ontario Works file belonging to a mutual client. The request included a consent form authorizing the Region to provide the requester with any such records, signed by the client. This request was received under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The file contains the personal information of other individuals besides the client (the client's named spouse and a dependent child under the age of 18). Some information is exempt from disclosure pursuant to section 38 sub. (b) of the Act. The recommendation herein is to sever any relevant personal information of the client's spouse.

## DESCRIPTION OF RESPONSIVE RECORDS

Records	Description	Pages
1 Notes List	List of all SDMT database notes made by staff	2
2 SDMT Notes	SDMT database notes, which consists of caseworker documentation of all work completed on this case	57
3 Payments List	List of all benefit payments made for the benefit unit	7
4 Benefits List	Ministry documentation, forms, letters and all submissions from the client or any applicable vendors	8
5 Main File	Ministry documentation, forms, letters and all submissions from the client or any applicable vendors	304

These records include the personal information of other individuals; the client's named spouse and dependent children. Some of this information will fall under section 38(b) of the Act.

## Section 38 (b) – Unjustified invasion of privacy

This section states that a head may refuse to disclose to the individual to whom the information relates personal information, if the disclosure would constitute an unjustified invasion of another individual's personal privacy. Unjustified invasion of privacy is described in section 14 of the Act. In this file, that would include unique identifiers (OW member ID numbers, OHIP numbers), some financial information (back account number) and any personal health information.

## USE OF DISCRETION

In claiming a discretionary exemption it is important to evaluate the appropriateness of that discretion by considering all relevant circumstances involved. This should include the criteria regarding invasion of privacy as stated in section 14(2) of the Act:

- The sensitivity of the information
- Whether that information was provided in confidence by the individual
- The accuracy and reliability of the information
- Whether the personal information is relevant to the fair determination of rights affecting the person who made the request
- The information may unfairly damage the reputation of any person referred to in the record

The potentially exempt information includes the personal information of the client's named spouse and other dependents.

The accuracy and reliability of the source for the spouse's personal information is unknown. Some of the relevant information was likely provided directly by the client while the other individual likely provided the remainder. Severing of this information does not alter the readability of any records, nor make it difficult to understand the information which relates directly to the client.

In considering discretion, the right of the requester to obtain his/her own personal information must be weighed against the institution's obligation to protect the personal information of other individuals. The purpose of the Act states that information should be available to the public and necessary exemptions from the right of access should be limited and specific. In this case, information which may be relevant to client and the dependent may be reasonable to provide. Whereas information solely relating to the spouse may be exempt, such as those personal identifiers the client would not otherwise have access to (SIN number, OHIP number).

## FEES

Photocopying: 468 pages x \$0.20 cents/page = \$93.60  
File Shipping: \$4.50 / 1 3lb weight = \$4.50

Total = \$98.10

## RECOMMENDATION

Partial disclosure, severing relevant personal information related to the spouse pursuant to section 38 (b) of the Act.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
Kristine Raciocot  
Information and Privacy Analyst

## DISCLOSURE DECISION:

1. Partial disclosure, severing relevant personal information related to the spouse pursuant to section 38 (b) of the Act.

- ☐ Recommendation Approved  
☐ Not Approved

Recommendation from the Clerk:


SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
Ralph Walton  
Regional Clerk



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# Processing: Recommendations and Decisions

## Fees

- The legislation adopts a user pay principle. This means an individual making a request must pay some of the costs the institution incurs to process the request.
- For this reason, a requester must have sufficient information to review the costs and decide how to proceed.
- Fees must be calculated for every request starting from the time a request is received. The fees apply to time, materials and services. The fees are set out in the regulations.
- Fees must be charged unless they are waived by the institution, or unless another statute has an overriding provision for charging fees.
- Fees and fee estimates can be appealed to the IPC. Fees and fee estimates should be detailed and reasonable. The IPC can order institutions to lessen or change fees if they find the institution has erred in their calculation of fees.

# Processing: Recommendations and Decisions

## Fees



- User pay principle = customer service  
“I want to know what I’m buying”
- Fees
  - Must be calculated and charged
  - They can be waived

# Processing: Recommendations and Decisions

## Fees – General Records

Processing Fee	Amount	Comments
Application Fee	\$5	Required for ALL requests
Search Time	\$7.50 per 15 min.	Manual searches
Preparation Time	\$7.50 per 15 min.	Prepare for disclosure
Computer Time	\$15 per 15 min.	Developing a computer program
Photocopies and printouts	\$0.20 per page	Double sided = 2 copies
Compact Discs	\$10 per disc	USB Keys
Shipping		Postage and courier

# Processing: Recommendations and Decisions

## Fees – Personal Information

Processing Fee	Amount	Comments
Application Fee	\$5	Required for ALL requests
<del>Search Time</del>		
<del>Preparation Time</del>		
Computer Time	\$15 per 15 min.	Developing a computer program
Photocopies and printouts	\$0.20 per page	Double sided = 2 copies
Compact Discs	\$10 per disc	USB Keys
Shipping		Postage and couier

# Processing: Recommendations and Decisions

## Search Fees

Time required for knowledgeable employee to locate records responsive to the request

- Includes:
  - Examining file indices, file plans or listings of records
  - Key word searches of computer databases including employee e-mail accounts
  - Locating files sent to central storage facilities/archives
  - Examining contents of files to identify records that meet search criteria
- Does not include:
  - Reviewing records to determine access decisions
  - Time spent photocopying
  - Travel time to visit off-site storage

# Processing: Recommendations and Decisions

## Preparation Fees

Time required for staff to physically prepare a record for disclosure

Most often this charge is for the time required to redact information subject to an exemption

- two minutes/page –  
could be more/less based on effort required (Orders M-782,M-858 and P-1393)

Other record preparation costs:

- The time taken for a person to run reports from a computer system



# Processing: Preparing and Sending Records

## Waiving Fees

The legislation and regulations lists factors for institutions to take into account when determining whether granting a fee estimate would be fair and equitable. These factors include:

- Actual cost of processing, collecting and copying varies from the payment;
- Financial hardship to the requester;
- Benefit to public health or safety;
- Whether the requester gets access to the record; and
- Small payment

# Processing: Preparing and Sending Records Abandoned or Withdrawn Requests

When a requester withdraws a request:

- Get notice of withdrawal in writing (email or letter)
- Retain documentation related to the request

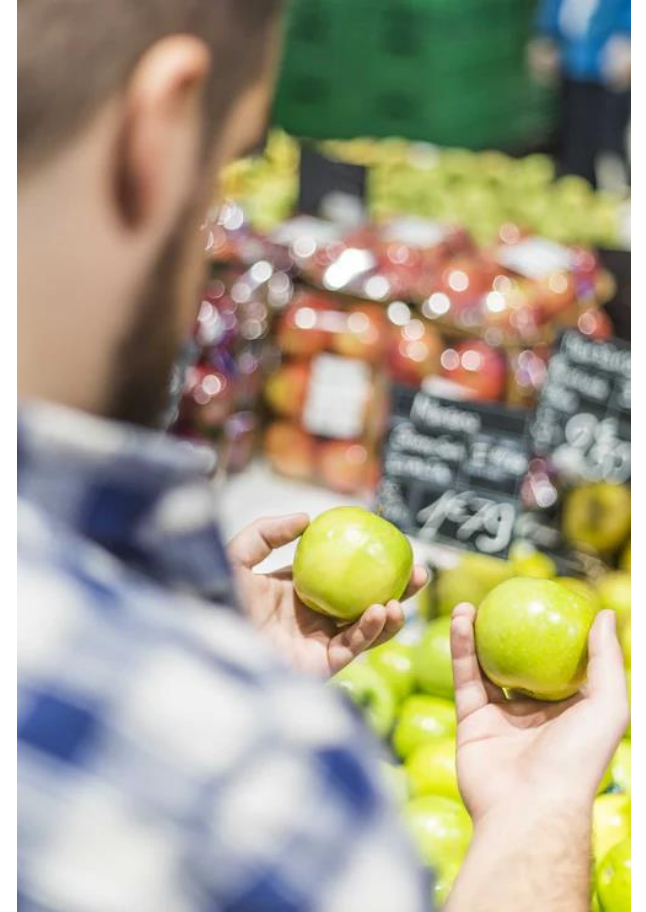
When a request is lost to follow up:

- The IPC recommends allowing 30 days to pass ... then abandoned
- Notify requesters in writing.

# Processing: Preparing and Sending Records

## Decision Letters

- Decision statements required
  - clear decision
  - Exemptions (with explanations)
- Identity of decision-maker
- Fees
- Appeal rights
- Record index
- Release of records



# Processing: Closing the File

Upon issuing the final decision letter, the request case file should be closed and information related to the request should be recorded for statistical compliance purposes.

Updated your case management system.

The request case file should be kept in an accessible location for the 30 day appeal period and in accordance with records retention schedules or policies.

# EXEMPTIONS – s.6

## Draft By-Laws & Closed Meetings

6 (1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

### Exception

- (2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,
- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old. R.S.O. 1990, c. M.56, s. 6.

# EXEMPTIONS s.7

## Advice or Recommendations

7 (1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

# EXEMPTIONS s.8

## Law Enforcement

8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(f) deprive a person of the right to a fair trial or impartial adjudication;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention; or

(l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. M.56, s. 8(1), 2002, c. 18, Sched. K, s. 14 (1).

# EXEMPTIONS s.9

## Relations with other governments

9 (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or
- (e) an international organization of states or a body of such an organization.

R.S.O. 1990, c. M.56, s. 9 (1); 2002, c. 18, Sched. K, s. 17.



# EXEMPTIONS s. 9.1

## Relations with Aboriginal Communities

9.1 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of relations between an Aboriginal community and the Government of Ontario or an institution; or
- (b) reveal information received in confidence from an Aboriginal community by an institution. 2017, c. 8, Sched. 20, s. 1.

# EXEMPTIONS s.10

## Third Party Information

10 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. M.56, s. 10 (1); 2002, c. 18, Sched. K, s. 18; 2017, c. 8, Sched. 20, s. 2.

### Consent to disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. M.56, s. 10 (2).

# EXEMPTIONS

11 A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions in respect of a matter under the Municipal Boundary Negotiations Act commenced before its repeal by the Municipal Act, 2001, by a party municipality or other body before the matter is resolved. R.S.O. 1990, c. M.56, s. 11; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 19.

# EXEMPTIONS s.12

## Solicitor-Client Privilege

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation. R.S.O. 1990, c. M.56, s. 12.

# EXEMPTIONS s.13

## Danger to Safety or Health

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. M.56, s. 13; 2002, c. 18, Sched. K, s. 20.

# EXEMPTIONS s.14

## Personal Information

14 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it

# EXEMPTIONS s.15

## Information Soon to be Published

A head may refuse to disclose a record if,

(a) the record or the information contained in the record has been published or is currently available to the public; or

(b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S.O. 1990, c. M.56, s. 15.

# Information and Privacy Commission



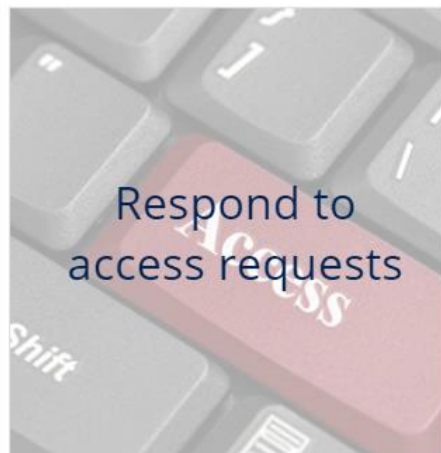
Forms



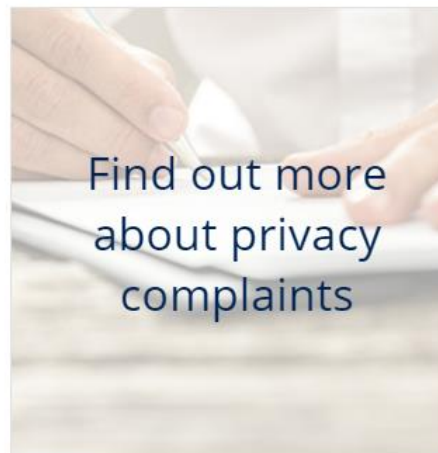
Guidance



Prevent and  
manage breaches



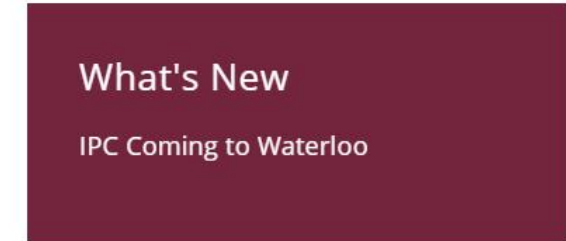
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What's New

IPC Coming to Waterloo



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New

A Guide to Privacy and Access to  
Information in Ontario Schools



Frequently Asked  
Questions: Part X



# Privacy

- Rules respecting the collection, use and disclosure of personal information.
- Procedures for individuals to access, and make corrections to, their own personal information, subject to some necessary and defined exemptions.

# Privacy

## Collection

- Receiving Personal Information and recording it (a record)

## Use

- Opening a file (paper or electronic) or Searching an individual in a database

## Disclosure

- Sharing information with someone outside the institution

# Privacy Personal Information

Recorded information about an identifiable individual, including:

- Name, address and telephone number
- Race, ethnicity, religious or political beliefs
- Age, sex, sexual orientation, marital status
- Health, financial, and educational information
- Criminal history, fingerprints, DNA
- Personal views or opinions
- Identifying number (Drivers License, SIN, Passport)
- Number or symbol assigned to an individual (e.g. employee number)
- Private correspondence sent to the institution

# Privacy

The privacy rules and their main purpose are summarized below, followed by a more detailed discussion.

- Authority to collect
- Manner of collection
- Notice requirements
- Proper use and disclosure
- Accuracy
- Retention
- Security
- Disposal and destruction

# Privacy Breach Management

Institutions should develop a comprehensive privacy policy that outlines the institution's commitment to the protection of privacy and how the institution will be compliant with the privacy rules established in the legislation.

## Privacy Impact Assessments

## IDENTIFY

Define the scope of the breach:

- Information and sensitivity
- Individuals involved
- Individuals affected

## NOTIFY

Inform your supervisor and divisional manager that a breach has occurred

Contact the Access & Privacy Unit immediately

## MANAGE

Work with Access & Privacy Unit staff to:

- Contain the breach
  - Isolate the resource(s) associated with the incident
- Inform affected individuals and monitor the situation

## INVESTIGATE

Gather all evidence related to the breach

Determine the cause (if possible)

Complete a Privacy Breach Incident Report

Consider safeguards against repeat events

## FOLLOW-UP

Make changes to existing policies, procedures and practices regarding the breach

Train staff in privacy and information management

Develop new policies, procedures and practices

With the FOI/P Coordinator, decide what long-term actions are required to prevent a future breach



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# Privacy Breach Consequences

- MFIPPA: Fees of \$5,000+
- PHIPA: If guilty of an offence under the Act, a person is liable on conviction for fees up to \$100,000 (corporations: \$500,000)
- No action is permitted if the defendant acted in good faith and yet still breached PHI
- No protection from negative media exposure or class action lawsuits
- Loss of public trust
- We are the only option for many people, will we let them fall through the cracks?

# Remember

1. Every situation is slightly different
2. Document, Document, Document!
3. Ask for advise or help (my contact info is below)
4. Don't feel pressured to release/not release information

Matthew Trennum

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Thanks for Listening ... any questions?

