

## Tick tock: timely responses to access to information requests

In Ontario, the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act are increasingly being used as tools to obtain access to information from government institutions including, but not limited to, provincial ministries, and most provincial agencies, boards, and commissions, as well as colleges of applied arts and technology, universities, hospitals, municipalities, police services boards, public library boards, school boards, conservation authorities, boards of health, transit commissions, certain municipal electricity corporations, and certain local housing corporations.

Under FIPPA or MFIPPA an individual, an investigative reporter, an unsuccessful RFP bidder, or any other interested person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record falls within one of the legislated exemptions or the head of the government institution has reasonable grounds to believe that the request is frivolous or vexatious. Once a government institution receives a request for information, along with the \$5 application fee, the responsibility shifts to the institution to respond in a timely manner. Access to information requests can be burdensome, and often require meticulous attention to detail to ensure that the institution does not disclose private, confidential, or protected information. When faced with a time-pressured response, attention to detail can be the first thing that is overlooked.

When a request is received, will your institution be ready to respond? Take the quiz to find out.



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- 1** On the first Friday of the month your institution receives its first access to information request of the new year. By when does your institution have to give written notice of its decision to the requester?

  - (A) The last Friday of the month
  - (B) 30 days later
  - (C) It depends
  
- 2** Your institution, a police services board, receives an access to information request seeking information and documentation about the qualifications of the chief of police. Your access to information and privacy co-ordinator determines that another institution, the Ministry of the Attorney General, has custody or control of the record the requester is seeking. How many days after the request is received do you have to transfer the request to the other institution?

  - (A) 7 days
  - (B) 10 days
  - (C) 15 days
  
- 3** In which of the following situations can your institution extend the time limit to respond to an access request for a period of time that is reasonable:

  - (i) the request is for a large number of records;
  - (ii) the request necessitates a search through a large number of records;
  - (iii) your access to information and privacy co-ordinator is on vacation;
  - (iv) meeting the time limit would unreasonably interfere with the operations of the institution; and,
  - (v) consultations with a person outside the institution are necessary to comply with the request.
  - (A) ii
  - (B) i, iv
  - (C) iii, iv
  - (D) v
  
- 4** Your institution receives an access to information request on March 31, 2015. On April 20, 2015, you deliver a fee estimate to the requester. On April 30, 2015, the requester pays the deposit required by your fee estimate. How long after receiving the requester's deposit do you have to give written notice of the institution's decision?

  - (A) 7 days
  - (B) 10 days
  - (C) 15 days

**1** (C) It depends. The head of the institution to which the request is made shall within 30 days after the request is received (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced. However, the 30-day time limit is subject to certain exceptions set out in the Act, including extensions, referrals to other institutions, and the requirement to pay fees. If the institution chooses not to avail itself of the exceptions, then it must deliver written notice by the following Monday, as the 30th day falls on the weekend.

**2** (C) An institution has 15 days to determine whether it has the record the requester is seeking and, if not, to make reasonable inquiries to determine whether another institution has custody or control of the record. If the head determines that another institution has custody, the head shall within 15 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. In Order PO-2479, the information and privacy commissioner held that an institution's responsibility to forward the request to another institution is not waived even when the requester had already submitted the same request to that other institution.

**3** (B) An institution may extend the 30-day time limit for a period of time that is reasonable in the circumstances where (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or (b)

consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be contemplated within the time limit. The institution must be cognizant of its obligation under the legislation to provide access to records in a timely fashion and be prepared to justify an extension of time as reasonable in the circumstances. The extension must be proportionate to the circumstances. Circumstances to consider include, but are not limited to, whether the request is similar to requests received in the past, whether the searches for responsive records have already been completed, the extent of work and time required to review and/or prepare the records for disclosure, challenges faced by the institution's staff with respect to the volume of requests received, and available hours to devote to access requests.

**4** (B) A fee estimate has the effect of suspending the 30-day time limit to give written notice of the institution's decision. If the requester appeals the issue of fees, the time limit continues to be suspended until the appeal is resolved, either by an order of the privacy commissioner or by mediated settlement between the parties. The day after the fee estimate is resolved is when the 30-day time limit continues to expire. A head shall require a requester to pay fees in the amounts prescribed by the regulations for: (a) the costs of every hour of manual search required to locate a record; (b) the costs of preparing the record for disclosure; (c) computer and other costs incurred in locating, retrieving, processing, and copying a record; (d) shipping costs; and (e) any other costs incurred in responding to a request for access to a record.

### YOUR RANKING?

- **One correct:** *might be time to brush up*
- **Two correct:** *not bad, but some further work needed*
- **Three correct:** *very well done, but not perfect*
- **Four correct:** *perfect*

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