

## Information, Privacy and Archives

Enterprise Recordkeeping, Access and Privacy Branch

### Frequently Asked Questions (FAQ)

The Information, Privacy and Archives (IPA) division has developed some Frequently Asked Questions to guide Freedom of Information Offices with processes impacted by business disruptions or closures.

### Key messages:

- Ontario continues to respond to limit the continuing public health emergency in the province, as the situation changes rapidly.
- While Freedom of Information (FOI) processes are an important service and right for Ontarians, in these extraordinary circumstances, public health and safety are of utmost importance.
- During such a period of public health emergency and despite reasonable efforts to work remotely, it is understandable that compliance with the timelines under the Acts may not be feasible.
- The ability to receive and process requests will be impacted, affecting compliance with the timelines for processing. Where possible, a timely response acknowledging limitations on search is advised.

If there are any questions, please contact [access.privacy@ontario.ca](mailto:access.privacy@ontario.ca).

## Freedom of Information Background

The Freedom of Information and Protection of Privacy Act (FIPPA) and Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) have specific procedures for new FOI requests and for ongoing FOI requests. There are time restrictions that must be met for compliance purposes and to accommodate a requester's right to access information that fall under the custody and control of an Institution.

## Q.1 What are the appropriate measures to take for incoming and ongoing FOI requests when an Institution is disrupted or closed for a significant duration of time?

A planned or unexpected Institution disruption to services or closure is not an event that is contemplated in the Freedom of Information and Protection of Privacy Act (FIPPA) and Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

If an Institution's FOI processes are being disrupted or closed there are some key factors to consider:

- **Mitigate disruption on operations** - Speak with your Institution's Business Continuity Planning lead to assess how FOI processes will be impacted or how business disruptions can be mitigated.
- **Communicate disruption to the public** - Consider communication planning for potential or current disruptions through website messaging or automatic email responses.
- **Continue to acknowledge incoming requests** - Where incoming requests may be received remotely, communicate acknowledgement of new FOI requests that are considered complete under FIPPA / MFIPPA.
- **Note the disruption in the file** – To maintain transparency and accountability keep track of ongoing FOI requests that may be disrupted by partial or complete Institution closures so this can be reported as part of statistical reporting for the Information Privacy Commissioner of Ontario (IPC).
- **Document decision-making** – While working remotely, continue to document decisions and decision-making processes in order to be able to provide appropriate background information as needed to requesters and the IPC.
- **Prioritize requests** - ask requestors to provide information on the urgent nature of their request, including for health and safety, public interest, special and compassionate, or humanitarian grounds.

## Q.2 What should we consider for business continuity planning?

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Consult with the accountable lead for the Institution's Business Continuity Planning process to assess:

- **Digital processes** - If paper-based processes can be converted to digital
- **Communications** - If alternate communication methods can be established
- **Working remotely** – If flexible work arrangements and different technology tools for staff processing requests and searching records can be leveraged
- **Health and Safety** – If all health and safety considerations have been discussed based on the Institutions needs

### Q.3 What should an Institution communicate for an extended closure?

In the interest of transparency, we suggest that Institutions inform the public where their FOI processes will take longer than usual until normal operations can resume, given the circumstances and the fact that there may be instances where work cannot be done remotely.

If an institution is excessively burdened during this period then it is recommended that institutions make the public aware through websites, automatic email responses, social media or other means, that requests may take longer than normal to process.

It's advised to also ask requestors to provide information on the urgent nature if their request (health and safety, public interest, special and compassionate, or humanitarian grounds) and that other requests may not be processed until later.

Additionally, institutions may request on websites / social media that if requests are not urgent, individuals consider waiting to submit the request until the institution is able to resume normal operations.

Please see sample template in Appendix A.

### Q.4 What is the Information Privacy Commissioner of Ontario (IPC) current position on disruptions to services and Institution closures?

The IPA has discussed service disruption with the IPC, as well as Institution closures that will impact FOI processes. The IPC understands the current challenges facing Institutions and

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recommends each Institution makes best efforts to meet timelines outlined in FIPPA and MFIPPA, while following public health advice to work remotely.

Both the IPC and IPA acknowledge that meeting FOI timelines may not be feasible, despite reasonable efforts to conduct work remotely. FOI statistics for compliance will be affected by the current advice to work from home, but Institutions can be confident that compliance rates will be considered in context by the IPC.

To the extent that institutions have the ability to meet the timeline obligations under the Act while working remotely, they should make every effort to do so and this is being encouraged.

The IPC [released an FAQ](#) about the current situation in which they advise the following:

We expect you to make reasonable efforts, based on operational realities, to comply with Ontario's access laws. However, this is an exceptional circumstance and we understand that many organizations will be unable to meet the 30-day response requirement. As such, we will consider these circumstances when evaluating appeals relating to deemed refusals and to extended timelines.

### **Q.5 How will disruptions to services or closure impact timelines and effect compliance statistics?**

FOI timelines and related statistics are an important standard that ensures all Institutions are transparent and accountable.

However, during such a period of service disruption or closure, compliance with the timelines for processing requests and any resulting deemed refusals or extensions of timeline appeals may not be feasible, despite reasonable efforts to conduct work remotely.

To the extent that institutions have the ability to meet the timeline obligations under the FIPPA and MFIPPA while working remotely, they should make every effort to do so and this is encouraged.

If a disruption of service or closure results in timelines not being met this explanation can be provided to the IPC during appeals and the Annual Reporting process for compliance.

### **Q.6 Is there any additional advice on how to approach FOI requests during disruptions of services or closures?**

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An Institution should consider contacting the requestor to explain the potential delay when experiencing disruptions of services or closures. The Institution may wish to seek written requester consent to delay the processing of the request until after the disruption or closure. Alternatively, the Institution may wish to seek requester representation as to the urgency of the request based on health and safety, public interest, special and compassionate, or humanitarian grounds.

If feasible, the Institution may provide an **acknowledgment letter** once the request is processed so that the requestor knows when the timelines have started.

It is best practice for the Institution to send an acknowledgement letter to the requester confirming the receipt of the request. This acknowledgment letter should include the request number assigned to the request, indicate the date of receipt of the request and provide contact information of the staff member responsible for processing the request. See **Appendix 4.1** for a template letter for a standard acknowledgement letter in the [Freedom of Information and Protection of Privacy Manual](#).

Timelines for requests may only be extended for reasons explained in [Section 27 of FIPPA](#) and [Section 20 of MFIPPA](#). Time extensions can be granted for volume of search or responsive records; or where consultation with an outside individual is required to complete the request.

**Note:** If a disruption of service or closure results in timelines not being met this explanation can be provided to the IPC during the Annual Reporting process for compliance.

### Q.7 What can we do to prioritize FOI requests during this period?

Depending on the operational and business continuity capabilities of the Institution during a business disruption or closure, to help navigate urgent requests staff may consider prioritizing requests based on health and safety, public interest, special and compassionate, or humanitarian grounds.

## Appendix A: Sample Templates

### Sample public messaging on websites / posters:

Freedom of Information (FOI) and correction of personal information requests received from the public continue to be important to us.

Due to the exceptional nature of the COVID-19 pandemic, the public should be aware that the [Insert Institution Name] FOI Office will have limited capability at this time to receive, process and respond to requests in a timely manner. As such, our ability to respond to requests within the FIPPA / MFIPPA legislated timelines may be impacted.

If your new request is not urgent, please wait to submit it until normal operations resume. If your request is for health and safety, compassionate and humanitarian reasons, or you need assistance, please contact the [Insert Institution Name] FOI Office.

We apologize in advance for any inconvenience that this may cause for you and invite you to call the [insert number] or email [insert email] if you wish to discuss your request further.

Thank you.

### Sample requestor messaging:

To be added to the [appropriate sample template](#) as needed:

Your Freedom of Information (FOI) request continues to be important to us but the [Insert Institution Name] FOI Office currently has limited capability to receive, process and respond to requests in a timely manner.

Your FOI request matters; however due to the exceptional nature of the COVID-19 pandemic, there may be delays with processing requests as there is currently limited capacity to receive and process requests. As such our ability to respond to requests, within the FIPPA / MFIPPA legislated timelines may be impacted.

I apologize in advance for any inconvenience that this may cause for you. If you have any questions, please contact [name] at [telephone] or [email].