



Practice Note

Request for Time Extension Under FOIP Section 14

This practice note is for public bodies under the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

This document is intended to help public bodies understand when to consider a time extension request to the Commissioner under sections 14(1) and (2) of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) and what information is required.

REQUIREMENTS FOR A TIME EXTENSION REQUEST

A public body must provide all relevant information necessary to demonstrate that the time extension request is reasonable or justified in the circumstances. An example of evidentiary requirements to support a time extension request is set out in the Federal Court of Appeal's decision in *Information Commissioner of Canada v. Minister of National Defence*, 2015 FCA 56.

The decision will be made based on the information provided in the Request for Time Extension (RFTE). **The OIPC will not typically seek information** from the public body, in addition to what was provided in the RFTE submission.

A public body should submit its request for a time extension after it has taken a time extension under its own motion under section 14(1), unless only section 14(2) applies.

The public body should complete and submit the RFTE form and provide the required attachments to the OIPC **at least 5 days prior** to the expiry of the time limit for responding.

A RFTE received by the OIPC *after* the public body's legislated time limit for response has passed, whether it is the 30 days under section 11 or any additional time it has taken on its own motion under section 14(1), will be treated as a decision by the public body to refuse access. **The OIPC cannot grant permission to take a time extension if the response due date was missed**, unless the public body provides evidence that it made reasonable efforts to respond by the due date (*Alberta Teachers' Association v. Buffalo Trails Public Schools Regional Division No. 28*, 2013, ABQB 283).

If a public body completes an access request after submitting an RFTE, but before the due date expires, they should **notify the OIPC immediately** and ask to withdraw their RFTE.

A separate RFTE form and attachments must be sent for each Public Body file number for which an extension is being sought.

The OIPC currently provides two separate RFTE forms for a public body to use; one for a first RFTE and one for a second/subsequent RFTE for the same public body file number. Please ensure the proper form is utilized.

Applicable Sections of the Act

The public body should select all sections of the Act on the RFTE form that they are applying as reasons for the requested extension.

Below are considerations required for each provision within the FOIP Act that can authorize an extension of time to process a request. **These considerations outline what the OIPC may consider when determining whether to grant a time extension.** This information is not legal advice, nor is it a decision of the Information and Privacy Commissioner (IPC) nor in any way binding on the IPC. The chart below is not exhaustive and is provided as guidance only.

<p>Section 14(1)(a)</p> <p>Applicant does not give enough detail to identify the record</p>	<p>Factors that may be considered:</p> <ul style="list-style-type: none"> • Despite attempts from the public body to obtain more detail to identify the records, more time is still required to complete this task. • Attempts to clarify the request have been difficult (include the number of times and dates that attempts were made). • Date request was clarified and wording so that responsive records could be identified. • Attempts made to conduct searches and any related problems. <p>Factors that may not be considered:</p> <ul style="list-style-type: none"> • The request is clear, but very large or difficult to execute (Order F2019-22). • Delays caused by the public body or their staff in locating and identifying the responsive records. • The public body should have sought additional information from the applicant during the initial stages but failed to do so.
<p>Section 14(1)(b)</p>	<p>Information must be provided for BOTH volume/search and how processing within legislated timelines will unreasonably interfere with the operations of the public body.</p>

Large volume of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body

Volume and Search

The OIPC considers 500 or more pages as the threshold for what may constitute a large volume.

If the volume is less than 500 pages, a rationale must be provided why the circumstances might constitute a “large volume”.

The following are general ranges for reasonable extension times, subject to the specific circumstances of each case (this is for a first RFTE, after the first 60 days of processing time; the initial 30 days plus a 30-day public body extension on their own motion):

Number of Pages	Range for extension
<500	0 unless exceptional circumstances/rationale is acceptable
500 to 1000	0-30 days
1000 to 2000	30-45 days
2000 to 3000	45-60 days
3000 to 4000	60-75 days
4000 to 5000	75-90 days
5000 to 10000	90-180 days
10000 to 15000	180-270 days

Factors that may be considered for volume and search:

- The number of pages of records that need to be searched or that are responsive to the request.
- Search details, accessibility of the records, number of systems and officials involved and any problems encountered.
- Approximate time taken to search.
- Types/formats of records that require different handling methods or expertise.
- Date the search for records was initiated and responsive records provided to the FOIP office.

Factors that may **not** be considered for volume and search:

- If the program areas have not responded to the record request and the public body has not provided a reasonable estimate for volume. For example, an “anticipation” of a large volume without more information.

Unreasonable Interference with the operations of the public body

Rationale is required to demonstrate the link between the justifications advanced and the length of the extension requested, and that processing the request in any lesser time than that being requested would unreasonably

interfere with the public body's operations. See *Information Commissioner of Canada v. Minister of National Defence*, 2015 FCA 56.

Factors that may be considered for unreasonable interference with the operations of the public body (not the FOIP office) to process the request within legislated timelines may include:

- Nature and extent of the interference.
- Impacts to the public body's operations that would result from processing the request without an extension of time. This includes impacts that result from the search for and identification of responsive records or consultation to consider the proper application of exceptions.
- Level of complexity the request involved and consideration of detailed severing that may impact the ability to process the request within standard timelines.
- The ability to reallocate staff to complete the processing.
- The number of access requests to process (which may be outside the norm). **Note:** Evidence is required. An explanation must be provided that compares current volume with prior months/years.
- Other access and privacy activities the public body is currently managing that are impacted by the request.
- The public body, based on its size and normal access to information processing capacity, has demonstrated it has adequately resourced its FOIP Act program, but despite this, the access request impacts the public body.
- Whether an unexpected or temporary resource issue impacts the public body's ability to respond in time (evidence and rationale required). Efforts made by the public body to address resourcing issues required.

Factors that may **not** be considered for unreasonable interference with the operations of the public body to process the request within legislated timelines:

- Temporary lack of resources due to holidays or chronic lack of resources (Order F2021-46). Public bodies should establish a baseline of what human resources are reasonably required to process the normal/average amount of access requests.
- Lengthy internal procedures (sign-offs) that cause unreasonable delay (Order F2017-12).
- Poor records management or use of programs or technology that unreasonably lengthen search times or the ability to create a response record package.
- Failure of program areas to provide records in a timely way.
- Statistics that do not inform how they impact the processing of the access request (eg. "We have received 100 access requests so far this year", without providing how this is different from other times and how it affects the request).

14(1)(c)

More time is needed to consult with a third party or another public body

The public body should determine if it needs to consult. It will not *need to* consult when:

- the public body has determined there is a clear right of access to the information because no exception to the right of access exists; or
- the public body has determined that it is clear that there is an exception to the right of access and intends to refuse access to the information requested (*Merck Frosst Canada Ltd. v. Canada (Health)* 2012 SCC 3, [2012] 1 S.C.R. 23).
- Section 14 does not impose a duty to consult with third parties outside of section 30 duties. The public body should consider if consultation is necessary to make a determination regarding access, as this is a discretionary process (Order F2018-10 at para. 11-16).

The public body should explain why the legislated time limit was not sufficient to complete the consultation and why the length of time requested is reasonable in the circumstances. The following may be considered, where applicable:

- Nature of the records and complexity of the consultation.
- Number of other public bodies or third parties that need to be consulted.
- Date requests to consult were sent or when they will be sent.
- Amount of time provided to the third party or another public body(ies) to respond to the consultation request, including an expected response date.
- Approximate volume involved in total and the volume involved for the consultation(s) (required) .
- The length of time the public body took to determine the need to consult.
- Any challenges in contacting third parties or another public body(ies) for consultation.

Factors that will **not** be considered:

- Internal consultations conducted within the public body.

Note: Third Party Notice and Time Extension Limitations

Section 30 of the FOIP Act sets out requirements for notifying a third party where a public body is considering giving access to records that may affect business interests of a third party or unreasonably invade personal privacy. Section 31 sets out the time limits and notice of a decision requirements.

The OIPC can provide more time to prepare for the issuing of a section 30 third party notice; but does not have authority to grant additional time to consider section 30/31 third party representations and to make a decision.

	<p>Once a section 30 third party notice has been issued, the public body must follow the response times set out within section 30/31 for all records that the third party notice relates to.</p> <p>The timelines under section 30/31 do not apply to records that are not subject to the section 30/31 process. The records that are not subject to the section 30/31 process, should be processed under the usual timelines under the FOIP Act (Order F2022-32). Therefore, public bodies may have different due dates for different records.</p>
<p>Section 14(1)(d)</p> <p>Third party request for review</p>	<p>If a third party has asked for a review under section 65(2), the public body may ask for an extension to allow the review process to occur for the records that are subject to the review (Order F2011-003).</p>
<p>Section 14(2)</p> <p>Multiple concurrent requests have been made</p>	<p>The OIPC considers 2 or more requests received from the same applicant within a 30 day time period of the access request (either way) to be concurrent.</p> <p>Factors that may be considered:</p> <ul style="list-style-type: none"> • Number of concurrent requests received. • Dates the public body received each request. • Whether the same applicant submitted each request. • If there are two (2) or more applicants, evidence that they work for the same organization or in association with each other. • Approximate volume involved in the access request and the concurrent requests (required). <p>We will not consider requests made outside of 30 days of each other as concurrent. However, multiple requests that fall outside this parameter may be considered in terms of whether the extension is reasonable.</p>

Is the Extension Requested Reasonable?

For all sections that are cited in an RFTE, a public body must make a serious effort to assess the amount of time it requires to complete processing of an access request. The public body should only request the amount of time that is reasonably required to complete the access request in a timely fashion and must provide details of how they applied their discretion in determining the amount of time required.

<p>Is the extension requested reasonable?</p>	<p>A public body must outline all relevant circumstances that justify that the length of the time extension requested is reasonable. To complete processing of an access request and in order to pass a reasonableness review, the estimation of that time must be sufficiently rigorous, logical and supportable (<i>Information Commissioner of Canada v. Minister of National Defence</i>, 2015 FCA 56).</p>
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Factors that may be considered:

- What tasks have been completed to date. Is this reasonable progress?
- What tasks remain.
- The estimated time in calendar days required to complete each remaining task. This assists the decision-maker to determine whether the amount of time requested is reasonable in the circumstances.
- The public body must provide details of how they determined the amount of time required.
 - The degree of complexity presented by the applicant's access request(s).
 - Any other relevant factors.
- Other access requests submitted by the same applicant but are outside of the timelines to make them concurrent under s. 14(2).
- Is the public body considering a staggered release if it is a large request?
- Has the public body informed or consulted with the applicant about the proposed time extension?
- Are there other relevant facts or circumstances surrounding the access request that may affect the Commissioner's decision (eg., pending public inquiries, legal proceedings) *Blades v. Alberta (IPC)*, 2021 ABQB 725.
- Volume involved. This is a consideration for s.14(1)(a), but also for determining what is a reasonable time extension would be under s.14(1)(c) and s.14(2).

Factors that may **not** be considered:

- Any delays caused by the public body in processing the request, for example:
 - delay in assignment
 - failure to issue record searches in a timely manner
 - failure to respond to record search requests
 - poor records management or use of programs or technology that unreasonably lengthens search times or the ability to create a response record package.
- Chronic staffing issues (Order F2018-10)
- Unusually long times taken for internal reviews to ensure consistency or signoffs (Order F2017-12).

If the OIPC agrees that a time extension is justified, it will evaluate the amount of time that has been requested and make a determination on the reasonableness of the amount of time requested based on the reasons outlined in the RFTE form.

The OIPC may substitute its own time determination.

Work Completed and Outstanding Tasks

Provide a detailed explanation of what tasks have been completed to date, what tasks remain and the estimated time in calendar days required to complete each remaining task. This itemized breakdown is helpful to the OIPC in determining whether to grant a time extension.

Relevant Attachments

Ensure all relevant attachments are sent with the RFTE form to support the responses to the selected sections in the RFTE. The OIPC requests that supporting documents are sent as a separate attachment to the RFTE form.

For Subsequent Requests for Extension: Is the Subsequent Request for Extension Reasonable?

The public body must make a serious effort to assess the amount of time it requires to complete processing of an access request; however, a subsequent request for an extension must demonstrate that the public body encountered a significant change in circumstances that resulted in additional or unexpected work such that additional time is required than what was previously granted.

Repetition of the first time extension reasons is not necessary if applying under the same section.

The public body should focus the submission on the significant change of circumstances and why this warrants consideration for additional time.

Explain the significant changes and why the previous time extension was not sufficient to complete the request

Factors that may be considered:

- What tasks have been completed to date. Is this reasonable progress?
- What tasks remain and why the previously granted time was insufficient to complete those tasks.
- The estimated time in calendar days required to complete each remaining task. This assists the decision-maker to determine whether the amount of time requested is reasonable in the circumstances.

- The public body must provide details of how they determined the amount of additional time required.
- The degree of complexity was more than initially expected or reported in the first time extension request.
- If a different subsection of s.14(1) applies that was not previously relied upon in the first time extension request. For example, a third party or other public body consult that was not known at the time of the first time extension request.
- Additional records were found or unusual challenges with processing the records.
- If the applicant has been informed of the request for the extension.
- Unusual increase in workload. Provide evidence.

Factors that may **not** be considered:

- Any delays caused by the public body in processing the request, for example:
 - delay in assignment
 - failure to issue record searches in a timely manner
 - failure to respond to record search requests
 - poor records management or use of programs or technology that unreasonably lengthens search times or the ability to create a response record package.
- Chronic staffing issues (Order F2018-10).
- Unusually long times taken for internal reviews to ensure consistency or signoffs (Order 2017-12).

If the OIPC agrees that a time extension is justified, it will evaluate the amount of time that has been requested and make a determination on the reasonableness of the amount of time requested based on the reasons outlined in the RFTE form.

The OIPC may substitute its own time determination.

For all RFTE submissions (or related questions), please send by email to:

timeextension@oipc.ab.ca