



Practice Note

## Request for Time Extension Under 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 under sections 14(1) and (2) of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) and how to complete the Request for Time Extension Under Section 14 Form (RFTE) for submission to the Office of the Information and Privacy Commissioner (OIPC).

### Requirements for a Time Extension Request

A public body should submit its request for a time extension after considering and taking the initial 30-day extension where required and authorized under section 14(1). If the initial 30-day extension has been taken, an additional request for a time extension may be submitted to the OIPC.

The public body should complete and submit the RFTE and provide the required attachments to the OIPC **5-7 days** prior to the expiry of the time limit for responding.

An RFTE received by the OIPC after the public body's legislated time limit for response has passed will be treated as a decision by the public body to refuse access and will be returned to the public body.

**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.

The OIPC's decision on a time extension request will be made based on the information provided in the RFTE. 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 OIPC will not typically seek information** from the public body, in addition to what was provided in the RFTE.

## Completing the Form

### Section A: Public Body Contact and File Number

Provide contact information; identify the relevant file and submission date.

### Section B: Request Summary and Background Information about the Request

Properly calculating the response due date is critical. The days referred to in the FOIP Act are **calendar days**.

Certain situations that may affect an access request's start and due date include:

- **Critical requirements are not met:** For example, the request does not include a required initial fee, the request does not provide enough detail to help the public body identify the record(s) requested, or the request is received by an office not authorized to receive requests.
- **Fee estimate:** When a public body provides a fee estimate to the applicant the "clock" stops for processing the request. The "clock" restarts on receipt of an agreement to pay the fee and receipt of the required deposit.
- **Section 14 extension:** The response time may be extended without the OIPC's permission under specific circumstances (section 14(1)).
- **Third party intervention (sections 30 and 31):** Notifying a third party under sections 30 and 31 can apply when a public body is considering giving access to a record that may contain information harmful to business interests of a third party or to personal privacy (sections 16 and 17). Section 14(3) of the Act allows a public body to extend the time for responding to a request for the period of time required to comply with the requirements of sections 30 and 31. An extension under section 14(3) only applies to the records subject to the section 30 notice. **Timelines cannot be extended by the OIPC for notifying a third party under sections 30 and 31 (see Order F2011-003, para. 11).**

## Section C: Extensions Previously Granted by the OIPC

When a public body is submitting an RFTE on a file where the OIPC has previously granted an extension, the public body should include relevant information since the last time extension was granted and refer to the previous RFTE OIPC file number.

## Section D: Third Party Intervention

This section requests documentation where a public body has issued or expects to issue third party notices under sections 30 and 31. This documentation provides information relevant to understand the access request processing activities and the number of days needed to complete this work.

## Section E: Applicable Sections of the Act

Below are considerations related to each provision within the FOIP Act that can authorize an extension of time to process a request. **These considerations outline what the OIPC includes in an examination to determine whether to grant a time extension.** A public body should provide information in their RFTE related to the considerations relevant to the request they are processing.<sup>1</sup>

### 1. Detail to Identify Requested Record

Consider the following when an applicant does not give **enough detail to enable the public body to identify a requested record (section 14(1)(a))**:

- Wording of the original request received by the public body and clarity of the request
- Attempts the public body made to clarify the request (include the number of times and dates that attempts were made)
- Date the request was clarified so that responsive records could be identified
- Wording of the clarified request
- Attempts made to conduct a search for responsive records, and problems that were encountered

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<sup>1</sup> In determining the amount of time necessary, a public body “must make a serious effort to assess the required duration, and that the estimated calculation be sufficiently rigorous, logic and supportable to pass muster under reasonableness review.” See *Information Commissioner of Canada v. Minister of National Defence, 2015 FCA 56*

## 2. Large Volume of Records

Consider the following where a **large volume of records are requested or must be searched and responding within the period set out in section 11 would interfere with the operations of the public body (section 14(1)(b))**:

**Note:** Information must be provided regarding **both** the volume of records requested or that must be searched, and how processing the request would interfere with the operations of the public body. The OIPC considers 500 or more pages as the threshold for what may constitute a large volume. 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.<sup>2</sup>

- Approximate number of pages of records that need to be searched
- Attempts made to complete the search, accessibility of the records, number of systems and officials involved and any problems encountered
- Approximate time taken to search
- Date the search for records was initiated and responsive records provided to the FOIP office
- Approximate number of pages of responsive records
- Relevant factors that may impact the public body's ability to process the request within standard timelines, for example:
  - Unusual volume of access requests received. **Note:** 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
  - Unexpected or extraordinary resourcing issues and efforts made by the public body to address resourcing issues. **Note:** The OIPC does not view temporary lack of resources due to holidays, personal leaves etc., or chronic lack of resources or records management issues, as justification for a time extension
  - Consideration of possible staff reallocation from other priorities or program areas to respond to the request
  - Other applicants' requests or other access and privacy related activities impacted by the request

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<sup>2</sup> See *Information Commissioner of Canada v. Minister of National Defence*, 2015 FCA 56

- How processing the request would unreasonably interfere with the operations of the public body (not only the FOIP office), for example:
  - 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
  - Impacts to program areas competing priorities, including those that result from the search for and identification of responsive records. **Note:** An explanation would be required as to the program areas' competing priorities and how they would be impacted
  - Impacts to program areas competing priorities due to necessary program area consultation to consider the proper application of exceptions. **Note:** An explanation would be required as to the need for consultation and the program areas' competing priorities and how they would be impacted, and the number of pages involved in the consultation
- Level of complexity the request involves and consideration of detailed severing that may impact the ability to process the request completely and accurately within standard timelines, and that may impact the ability to reallocate staff to complete the processing

### 3. Consultation

Consider the following when **more time is needed to consult with a third party or another public body (section 14(1)(c))**:

- Whether the records subject to the consultation were generated by the public body or third party being consulted
- Nature and complexity of the consultation
- Number of 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 public body or third party to respond to the consultation request
- Approximate volume of records (i.e. number of pages) that are involved in the consultation
- Current status of the consultation, including an expected response date

**Note:** The public body must explain the manner and complexity of consultations to justify why the legislated time limit was not sufficient to complete the consultation, and demonstrate that the length of the extension requested is reasonable in the circumstances. Section 14(1)(c) does not apply to internal consultations conducted within the public body.

#### 4. Multiple Concurrent Requests

Consider the following if **multiple concurrent requests have been made (section 14(2))**:

- 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

**Note:** The public body must outline all relevant circumstances that justify that the length of the time extension requested is reasonable.

#### Section F: Work Completed and Outstanding Tasks

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

#### Section G: Attachments

This information must be included to support the responses to the previous sections in the RFTE.