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## The New Office of the Information and Privacy Commissioner Approach to Time Extensions for FOIP Requests

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**Administrative Policy Commented on:** [OIPC Practice Note Request for Time Extension Under FOIP Section 14](#)

On June 17<sup>th</sup>, 2024, the Office of the Information and Privacy Commissioner of Alberta (OIPC) changed their policy for Time Extension Requests Under Section 14 of the *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#) (*FOIP*). The OIPC issued two new standardized forms and issued a [practice note for public bodies seeking time extensions](#) (the Practice Note). The OIPC's attention to how they exercise their discretion in granting time extensions is encouraging and shows the OIPC is doing what it can to address the delay problem in Alberta *FOIP*. This post assesses a few of the more notable changes.

### Background

*FOIP* is Alberta's law for controlling access to government held records, but it [has problems](#) that make it ineffective at securing the public's right of access and limiting government secrecy. The OIPC is the administrative body that reviews public bodies' compliance with their obligations under *FOIP*.

One common problem with records requests is public bodies taking long time extensions to release records. Section 11 of the *FOIP* contemplates most requests being completed within 30 days:

- 11(1)** The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless
- (a) that time limit is extended under section 14, or
  - (b) the request has been transferred under section 15 to another public body.

But section 14 sets out the conditions in which extensions can be taken:

- 14(1)** The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if
- (a) the applicant does not give enough detail to enable the public body to identify a requested record,
  - (b) a large number 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,

- (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or
  - (d) a third party asks for a review under [section 65\(2\)](#) or [77\(3\)](#).
- (2) The head of a public body may, with the Commissioner’s permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other.
- (3) Despite subsection (1), where the head of a public body is considering giving access to a record to which [section 30](#) applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of [section 31](#).
- (4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant
- (a) the reason for the extension,
  - (b) when a response can be expected, and
  - (c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.

In effect, a public body gets a ‘free’ 30-day extension the public body can take on their own initiative. Beyond that first 30-day extension, the public body must obtain the OIPC’s permission. The OIPC therefore has a discretionary power over when to allow time extensions and how long time extensions will be.

In the new Practice Note for public bodies seeking time extensions and associated forms, the OIPC is standardizing how it exercises its discretion over time extensions. Among other issues, this is likely a response to the decisions relating to a July 2020 *FOIP* request for records about the Alberta 1976 Coal Policy, in which a lengthy time extension was given based on a misperception about the number of records at issue (see my posts on those decisions [here](#), [here](#), and [here](#)).

The new practice note will generally be beneficial. It indicates the OIPC’s recognition of the importance of time extensions and delay under *FOIP* and provides a more structured approach to how OIPC discretion will be exercised. I provide a few specific comments on the new practice note below.

### Comments on the New Practice Note

First, the practice note has a table of “general ranges for reasonable extension times” for large volumes of records (at page 3).

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

The table of extension ranges will help standardize time extension lengths, but the table is missing a crucial detail. Does the number of pages refer to the number of pages that must be searched or the number of pages that are anticipated to be released? The difference between those numbers was the core problem about the size of the record and the length of the time extensions given in [the coal policy FOIP case](#). The OIPC ought to specify this refers to the number of pages expected to be released – which a public body ought to know by the time they seek OIPC approval for a time extension.

Second, the drafting of *FOIP* and its regulations fails to incentivize good records management and indirectly rewards poor records management. The more hours it takes a public body to prepare records, the longer the time extension they might be given, and the requestor is billed by the hour (see schedule 2 of the *Freedom of Information and Protection of Privacy Regulation*, [Alta Reg 186/2008](#)). If two different public bodies have copies of the same records, but one public body has poor records management, that public body may be given more time and may charge more money to provide the record. The practice note attempts to correct this problem, stating that delays caused by the public body will not justify time extensions. Examples include the existence of lengthy internal procedures approval procedures, poor records management technology, and failure of public body staff to provide records to the *FOIP* offices in a timely way (at 4 and 7). While the OIPC’s approach is encouraging, [public body records retention and management](#) need legislative attention and the full scope of the problem cannot be solved by the OIPC.

Third, the Practice Note attempts to confront the vagueness of the subsection 14(1)(c) relating to time extensions for consultation. Subsection 14(1)(c) is odd as it is not obvious why a public body would need to consult with other public bodies when making a *FOIP* access determination. The Practice Note requires public bodies to “explain why the legislated time limit was not sufficient to complete the consultation” (at 5), clarifying that mere fact that another public body will be consulted does not justify an extension. The Practice note also clarifies that “[i]nternal consultations conducted within the public body” will not be considered. Again, the OIPC’s approach is encouraging, but in my view the phrase “another public body” should be removed from *FOIP* by legislative amendment. Regardless of how many public bodies are involved, government as a whole should be held to the timelines in *FOIP*.

Fourth, a weakness in the Practice Note is the lack of attention to the requirement for a public body to tell an applicant the reason for the extension (*FOIP* at s 14(4)(a)). A requestor has a right to complain about an extension they believe is unreasonable (*FOIP* at s 14(4)(c)) but that right is not useful unless the requestor is provided an explanation for the time extension sufficient to assess whether the time extension is justifiable. The time extension request form ought to be provided to the requestor with only personal information of third parties withheld. The notice given to requestors usually only says that the request is ‘being processed’ or ‘under review’, which is not useful information in determining whether an OIPC complaint is warranted. Requestors need to be provided with the detailed explanation of what work has been completed on the request and what tasks remain or they are forced to file complaints without knowing if the complaint has any merit.

As noted at the outset, overall this new guidance is a step in the right direction, and evidence of an OIPC working on procedural improvements, but the larger weaknesses of *FOIP* require attention from a legislature.

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