

Office of the Information and Privacy Commissioner
Ontario, Canada

*How to Effectively & Efficiently
Respond to FOI Requests
(A Regulator's View)*

36th Annual COGEL Conference, Pittsburgh, Pennsylvania
December 8, 2014



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Information and Privacy Commissioner of Ontario, Canada (IPC)

- Ensures that provincial and municipal government organizations comply with freedom of information and privacy laws in Ontario;
- Resolves access to information appeals when the government refuses to grant access to government-held information;
- Power to issue binding orders requiring government organizations to take specific actions;
- Investigates public sector privacy and health privacy complaints.



FIPPA and *MFIPPA*:

Ontario's Statutory Framework

- The right to file an access request is set out in *FIPPA* (provincial government institutions) and *MFIPPA* (municipal government institutions).
- *FIPPA* and *MFIPPA* provide for a number of mandatory and discretionary exemptions from the right of access. For example, the personal privacy exemption (mandatory) and law enforcement exemption (discretionary).
- *FIPPA* and *MFIPPA* also prescribe the procedures to be followed when making an access request and procedures that government institutions must follow when responding to access requests.



IPC Role

- IPC becomes involved when a requester is dissatisfied with government institution's response to foI request and files an appeal;
- Three step appeal process – Intake, Mediation, Adjudication;
- Most appeals resolved at Intake or Mediation – our staff gain valuable insight into how institutions can respond more effectively to requests and avoid appeals.



The Requester's Obligations

- The requester must:
 - Make the request in writing;
 - Provide sufficient detail to enable an experienced employee, upon reasonable effort to identify the records;
 - Pay the fee.



The Institution's Obligations

- The institution must respond to the requester in writing within 30 days following the date when the request was clarified unless the records contain third party commercial or business information, or the personal information of another individual.
- Where third party information or the personal information of another individual is at issue, the institution must notify the affected organization or individual and consider their views before making a decision about access.



What Prevents Effective Responses?

- Lack of resources/time
- Inadequate training
- Experience – many institutions are small and rarely receive requests
- Difficult clients
- Institutional Inertia
- Bad legal advice



Clarify the Request

- Often, requesters do not know the kinds of records an institution has in its custody or control. As a result, some requests do not provide sufficient detail to enable an experienced employee with reasonable effort to identify the record(s) requested.



Clarifying a Request (cont'd)

- *FIPPA* s. 24(2) and *MFIPPA* s. 17(2) state: “If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request...”
- Our office has issued Orders finding that the institution should have informed the requester of the defects in the request and offered assistance in reformulating the request.¹
- The most user-friendly approach to clarifying a request is to telephone the requester and discuss the matter.

¹ Orders P-134, PO-1730, MO-2279-I, PO-2634



Standard clarification questions

- Are you interested in any particular records?
- Do the records you are requesting involve a specific incident?
- Are you interested in access to another individual's personal information?
- Do the records in which you are interested involve a specific time period? (For example, "...all information related to X, between April 1, 1991 and March 31, 1992.")
- Are you seeking records from a particular branch or from a particular geographic region?
- Have you already spoken with a specific branch or with particular individuals from the government organization? Can you name the branch or individuals? (May help avoid a duplication of effort.)



Narrow the Request

- Take advantage of any time available before responding to the request to narrow it.
- Work with the requester to identify interest based solutions – what is the bottom line?
- Work with the program area responsible for generating the responsive records to find creative solutions.
- Explain the benefits that result from narrowing the request.



Index of Records

- An index of records can benefit the institution, the requester, and can also be helpful in the event of an appeal.
- An index assists in keeping track of all records and the decisions reached for each of them, and is a very effective resolution tool.
- Provide the index to the requester at the earliest opportunity.



Index of Records (cont'd)

An index of records should include:

- Document number and description of each record;
- Indication for each record whether access granted or refused or whether part or parts of the record severed;
- For each record or part of a record refused, the provision of the Act under which access refused (provide copies of the sections of the Act cited);
- For each record or part of a record refused, the reason the provision applies to the record;



Time Extensions

A institution may extend the time limit beyond the 30 days for a period of time that is reasonable in the circumstances, where,

- 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
- consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.



Elements of an Adequate Decision Letter

- Provide an index of records if you have not done so previously. If you have provided an index of records, ensure that the index is up to date;
- Provide the requester with information about the charging or waiving of a fee in connection with the request;
- Provide details regarding why an exemption applies or why records are not response (e.g. police officer notes about unrelated incidents);
- Provide the name and the position of the person responsible for making the decision.



Frivolous and Vexatious Requests

- A person does not have a right of access if the institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious:
 - the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
 - the request is made in bad faith or for a purpose other than to obtain access.
- The threshold for claiming the frivolous or vexatious exemption is high, and it will generally not be successful if institutions simply claim they do not have enough resources.



MO-2488

- High number of requests: **54 requests** with **372 parts** in total (an average of 6.5 parts per request).
- Requests excessively broad and unusually detailed: Open ended wording (“**any and all**”, “**including but not limited to**”).
- Purpose of the request for an objective other than access: The appellant **already possessed** many of the emails requested.
- Timing of the requests: The close timing of **appellant’s lawsuit** and requests was a relevant factor in favour of finding an abuse of the right of access.



What makes a request frivolous/vexatious?

- Number of requests
- Nature and scope of requests – excessively broad/identical to previous requests
- Timing of requests – connected to some other event
- Purpose of requests – “nuisance” value/harass government/burden system
- Nature and quality of interaction/contact between requester and foi staff



Conditions on Frivolous/Vexatious Requests

The adjudicator imposed limits on the processing of the appellant's requests:

- For a period of one year, only **one transaction** by the appellant may proceed at any given point in time;
- The City may decide the **order** in which it wishes to process the remaining requests the appellant would like to keep open;
- After the one year period, the appellant or the City may apply to the IPC to ask that the conditions be **varied**. Otherwise, the conditions continue in effect until such time as a variance is sought and ordered.



Appellant Conditions

In addition, the adjudicator imposed conditions on the appellant:

- The appellant must **specify** the exact information or records sought, and if possible, the location in which the records may be found;
- Each request must only deal with **one subject matter** and must seek specific information, and will not include the phrases “any and all” and “but not limited to”;
- Apart from the request, the appellant or a representative of the appellant cannot otherwise **contact the City** (verbally or written), unless the City initiates the contact to clarify the request;
- Otherwise, the City is **not required** to respond to the appellant.



MO-3049

- A municipality claimed that **three requests** for access to its cheque registry and credit card expenses were frivolous or vexatious pursuant to s. 4(1)(b) *MFIPPA*.
- Municipality argued that **due to its small size and budget**, it cannot employ a full-time FOIP coordinator, and the person with those duties often finds it difficult to respond to requests within the 30 day limit.
- The IPC found that **the requests were not frivolous or vexatious** and ordered the town to provide a decision letter in response to the requests.



MO-3049 (cont'd)

The IPC provided suggestions to improve the efficiency of the town's FOI system given its small size:

- **Publish** responses to FOI requests on the town's website;
- Be more **proactive** about releasing information ('Access by Design');
- Seek a **time extension** in accordance with s. 20(1) *MFIPPA*;
- Utilize **fee provisions** set out in s. 45(1) *MFIPPA*;
- **Provide reasons** for refusing access as required by s. 20.1(1)(b) when claiming that the request is frivolous or vexatious.



Most Effective Response – Avoid Process Entirely

- While formal foi process may be required, dissemination of government-held information can be accomplished through other mechanisms
- Ontario moving to increase the amount of proactive disclosure of information
- Province and municipalities finally embracing the Open Data movement



Published Sunshine List

- All government salaries more than \$100,000 published yearly



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[Home](#) > [Salary Disclosure](#) > Government of Ontario : Ministries

Public Sector Salary Disclosure for 2013: Government of Ontario : Ministries

The information contained in these pages is a copy of the official documents of these organizations. Since the Public Sector Salary Disclosure Act does not specify the language in which these documents need to be prepared, the Ministry of Finance publishes these documents in the original language in which they were prepared and presented to the Ministry.

Disclosure for 2013 under the Public Sector Salary Disclosure Act, 1996 Government of Ontario : Ministries

This category includes all ministries.

Divulgence pour 2013 en vertu de la Loi de 1996 sur la divulgation des traitements dans le secteur public Gouvernement de l'Ontario : Ministères

Cette catégorie englobe tous les ministères.

[First page](#) [Previous](#)

[1](#) | [2](#) | [3](#) | [4](#) | [5](#) | [6](#) |

[Next](#) [Last page](#)

Employer / Employeur	Surname / Nom de famille	Given Name / Prénom	Position / Poste	Salary Paid / Traitement	Taxable Benefits / Avantages imposables
Aboriginal Affairs / Affaires autochtones	ALMOND	MARGOT	Director, Corporate Management / Directrice, gestion ministérielle	\$118,745.69	\$181.35
Aboriginal Affairs / Affaires autochtones	BENNETT	PHYLLIS	Manager, Issues Management & Media Relations / Chef, questions d'intérêt et relations avec les médias	\$110,323.09	\$167.78



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Ontario Government Expenses

Travel, meal and hospitality expenses

Browse or search work-related expenses claimed by government employees, elected officials and political staff.

Use the **Show/hide columns** button to see more detail about each expense claim. This feature displays more information about air fare, travel destination, meeting attendees, etc.

You can also sort and filter the information displayed to narrow your search.

[Learn more about the rules covering these expenses.](#)

View expenses by fiscal year

Search

Search

Show/hide columns

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Show default | <input checked="" type="checkbox"/> Name | <input checked="" type="checkbox"/> Title | <input checked="" type="checkbox"/> Type |
| <input checked="" type="checkbox"/> Ministry | <input checked="" type="checkbox"/> Purpose | <input checked="" type="checkbox"/> Start Date | <input checked="" type="checkbox"/> End Date |
| <input type="checkbox"/> Destination | <input type="checkbox"/> Attendees | <input type="checkbox"/> Other Attendees | <input type="checkbox"/> Air Fare |
| <input type="checkbox"/> Other Transportation | <input type="checkbox"/> Accommodation | <input type="checkbox"/> Meals | <input type="checkbox"/> Incidentals |
| <input type="checkbox"/> Subtotal | <input type="checkbox"/> Hospitality | <input type="checkbox"/> Other Expenses | <input checked="" type="checkbox"/> Total |



CALL DOCUMENTS

- [Call documents](#)
- [Call process](#)
- [Construction Services](#)
- [Goods and Services](#)
- [Professional Services](#)
- [Offer to Purchase](#)
- [Addenda files](#)
- [Search](#)

CALL DOCUMENT TOOLS

- [Vendor registration system](#)
- [Call document purchasers list \(All\)](#)
- [Call document purchasers list generator](#)
- [New! Awarded contracts](#)
- [New! Awarded contracts search](#)
- [New! Sole source contracts](#)
- [Viewing copy of call documents](#)
- [Fees](#)

RESOURCES

- [Doing business with the City](#)
- [Construction specifications](#)
- [FAQs](#)
- [Public Notices](#)
- [Policy & Legislation](#)
- [Fair Wage Office](#)
- [Purchasing links](#)
- [Contact us](#)
- [Complaints](#)

Competitive Call Award Results
ONLINE CALL DOCUMENT SYSTEM
CONSTRUCTION SERVICES * GOODS & SERVICES * PROFESSIONAL SERVICES

The following contracts have been awarded by the City of Toronto. All call documents were publicly advertised in accordance with Chapter 195, Purchasing By-law. Contracts were awarded to the lowest bidder meeting specifications for Request for Quotations and Tenders, and the highest scoring proponent in the case of Request for Proposals.

Tender results only are still available by calling the tender hotline at 416-397-0849.
Please contact the buyer referenced in each call for additional information relating to the award(s).

Note: All award dollar values listed below do not include Harmonized Sales Tax (HST).
Click the triangles on the left to collapse and expand the categories. ✗ indicates Cancelled

Call Number	Client Division/Contact	Description	Successful Bidder	Contract Amount	Date awarded
Construction Services					
Asphalt paving					
115-2014	Engineering & Construction Services - Engineering Services	Disco Transfer Station Paving Construction	Gazzola Paving Limited	\$486,755.00	07/14/2014
123-2014	Transportation Services	Local Road Resurfacing – Wards 3, 6 & 13, Etobicoke-York District	Gazzola Paving Ltd.	\$5,411,107.00	06/06/2014
135-2014	Engineering & Construction Services - Engineering Services	Major Road Resurfacing & Trail Enhancements = Meadowvale Road.	Furfari Paving Co. Ltd.	\$2,988,607.00	07/18/2014
137-2014	Transportation Services	Resurfacing And Streetscaping Of Danforth	CRCE Construction Ltd.	\$1,867,950.00	08/08/2014
151-2014	Transportation Services	Local Road Resurfacing (east area) Toronto & East York District	A&F Di Carlo Construction Inc.	\$6,900,000.00	10/01/2014
161-2014	Transportation Services	Local Road Resurfacing	Furfari Paving Co. Ltd.	\$4,148,456.20	07/24/2014
162-2014	Transportation Services	Local Road Resurfacing	D. Crupi and Sons Ltd.	\$2,070,736.50	08/08/2014
185-2014	Transportation Services	Provision of Roadway Crackfilling - North York District	Roadmaster Road Construction & Sealing Ltd.	\$329,530.00	08/08/2014
240-2014	Transportation Services	Hot-In-Place Asphalt Pavement Repairs	Paveseal Ltd.	\$164,980.80	08/27/2014
291-2013	Facilities Design & Construction	Asphalt Replacement, 18 Cranfield Road, Toronto, ON.	Atlas Paving Co. Inc.	\$206,800.00	02/25/2014
54-2014	Transportation Services	Resurfacing of Lakeshore Blvd. West	Furfari Paving Co. Ltd.	\$2,687,656.00	05/05/2014
55-2014	Transportation Services	Local Road Resurfacing - Etobicoke York District	Furfari Paving Co. Ltd.	4,944,404.10	05/07/2014
94-2014	Transportation Services	Local Road Resurfacing, SCARBOROUGH DISTRICT, WARDS 35, 36, 37 AND 40	D. Crupi & Sons Ltd.	\$2,399,141.25	05/28/2014

Open Government Engagement Team

Open by Default Report

Highlights need for improvement of the FOI framework:

- Reform Acts by basing them on the principals of Open by Default and requiring the proactive publication of certain types of information.
- Reform the FOI process so that government systems can receive, process and respond to information requests online and in machine-readable formats.
- Publish FOI responses online as soon as they are released to the requestor(s).

Open by Default



A new way forward for Ontario



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Open By Default: Make Data A Public Asset

Implement an Open by Default data policy the includes:

- Publish all government data in commonly accepted open standards, unless there are privacy, security or legal reasons for not doing so.
- Publish data in a timely manner.
- Data should free of charge and in commonly-used formats
- Ensure no data is destroyed
- Waive intellectual property for data the government collects or creates
- Extend these principles to agencies and broader public sector



Open by Default

Amend FIPPA to require proactive publication of certain types of data:

- Briefing notes
- Survey data
- Policy papers
- Expenditure info
- Completed FOI responses



Open By Default: Fees

- Require ministries to pay for all costs associated with freedom of information requests when:
 - The ministry fails to meet required timelines for response (ex. 30 days) or;
 - No fees chargeable for responding to freedom of information requests for information on new IT systems.



Resources (www.ipc.on.ca)

- “IPC Practices No. 1: Drafting a Letter Refusing Access to a Record”
- “IPC Practices No. 15: Clarifying Access Requests”
- “IPC Practices No. 22: Routine Disclosure/Active Dissemination (RD/AD) of Government Information”
- “Basic Tool Kit for New Co-ordinators”
- “Processing Voluminous Requests: A Best Practice for Institutions”
- “*Access by Design: The 7 Fundamental Principles*”



How to Contact Us

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