



AUDIT REPORT 24-02

Vancouver Coastal Health Authority's duty to assist

April 1, 2020 to March 31, 2023

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INFORMATION &
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FOR BRITISH COLUMBIA

TERRITORIAL ACKNOWLEDGEMENT



The Office of the Information and Privacy Commissioner for BC respectfully acknowledges that its offices are located on the traditional territories of the Lək̓ʷəŋən people of the Songhees and Esquimalt Nations. As an Officer of the Legislature, the work of the Commissioner spans across British Columbia, and the OIPC acknowledges the territories of First Nations around BC and is grateful to carry out our work on these lands.

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Commissioner's Message

On July 26, 2024, British Columbia's Provincial Health Officer Dr. Bonnie Henry issued an order to end the COVID-19 public health emergency and rescinded all related orders. This move marked the end of a four-year period that began with the declaration of a public health emergency on March 17, 2020.

This period was an extremely challenging time for all people and organizations in British Columbia. It is no surprise that Vancouver Coastal Health (VCH), one of the province's largest health authorities, faced among the greatest pressures and focused efforts on operational pandemic response and providing core health services.

This audit examining VCH's duty to assist also spans most of the period of this public health emergency.

Readers of this report will learn how the organization's responsiveness to freedom of information (FOI) requests suffered during this time – a time of crisis when transparency and accountability were key to keeping people's trust.

For example, we found:

- Undue delays across the board – only a quarter of requests met FIPPA's 30-day benchmark, and VCH failed to comply with the Act's time limits in nearly three quarters of responses.
- Improper application of time extensions – VCH sometimes extended the time limit without a valid reason, or applied an extension after the original time limit to respond already passed.
- Inadequate communication with applicants – roughly a third of the time, VCH did not even acknowledge a request was received.



While these may be signs of an organization facing unprecedented circumstances, our audit found issues that go beyond just organizational pressure:

- Following a 2021 amendment to FIPPA, VCH, like other public bodies, decided to charge a \$10 FOI application fee for general access requests. VCH administered this fee by only accepting payment by cheque or money order, unnecessarily exacerbating the barrier to access (though it later changed this approach).
- VCH has a policy for routinely releasing certain records without the need for an FOI request, also known as proactive disclosure – a practice this office encourages. However, contrary to this policy, there were instances where VCH processed requests for these records as an FOI request and charged the application fee, rather than pointing applicants to where the records were already publicly available. Further, some records that were already public were difficult to find online.
- VCH was particularly unresponsive to the media during this period. The average number of days it took to respond to FOI requests from the media was 116 days, peaking at 171 days in 2021/2022.

A period of crisis places public bodies under additional operational pressure. Precisely for this reason, they are also under considerable public scrutiny. People are facing individual and collective threats and they need to know, and be able to verify, that public bodies are doing everything they can to protect health and safety. In British Columbia the core of our health service – that which is provided by our health authorities – is a public system. Perhaps the most important reason why is so that we can keep public bodies accountable.

Trust in our democracy is built on transparency and accountability, which was vital during the pandemic. People were afraid, and justifiably so. COVID-19 was a real, new threat. People were required to comply with extraordinary measures and limitations, affecting their movement, interactions with family and loved ones, friends, co-workers and the public in general, as well as requirements under vaccine mandates. The public's trust was critical to the success of the pandemic response.

Trust will always be essential in our health system – people access these services often when they are at their most vulnerable. But we cannot ask the people of British Columbia to trust their health system, or indeed any public service, as a matter of faith. For this reason, VCH's core business, as a public health authority, is not just the provision of health services but rather the transparent and accountable provision of health services. Deprioritizing freedom of information is harmful to its core business, just as it would be for any public body.

Fortunately, this audit does not tell just one story. It also tells the story of a health authority that has recognized and is acting on the need for change. The data presented in the body of this audit demonstrates that by the third year of the study period, VCH improved its FIPPA compliance. The average number of days that VCH took to respond to a request decreased by half between 2021/22 and 2022/23. As noted above, VCH expanded payment options for

application fees. Executive have recognized the importance of information management and FOI responses by bringing in a new FOI tracking system and planning for a new document management system. New processes have been put in place to escalate FOI matters to executive when necessary. I believe this shows VCH has recognized the need for a cultural change that required leadership from the top.

I hope that readers of this report take away both stories. The first is the story of how, in the face of an unprecedented crisis a public body might be tempted to retreat from transparency and accountability. But the second story is how VCH presents an example of an organization that has learned that becoming less transparent is harmful to the core business – both in the immediate term and in the long run – and decided to drive cultural change throughout the organization.

I would like to thank the leadership at VCH and its staff for participating in this audit, and for the OIPC staff that conducted it. I think it offers lessons that we can apply, not just for the next crisis, but every day.

Executive Summary

The Office of the Information and Privacy Commissioner (OIPC) conducted this audit of the Vancouver Coastal Health Authority's (VCH) Freedom of Information (FOI) program under s. 42(1)(a) of FIPPA. Similar to previous OIPC audits of public bodies' access to information processes, this audit focused on whether VCH met its duty to assist and examined areas where VCH performed well, and areas where it required improvement to comply with legislation and OIPC guidelines.

The OIPC proactively selected VCH's FOI program based on a review of complaints and requests for review involving public bodies over the previous three fiscal years. Most of the complaints related to VCH duties required by FIPPA, the adequacy of searches, and time extensions taken by VCH.

The audit included interviewing VCH FOI staff, examining written materials pertaining to VCH's FOI program, and analyzing a representative sample of VCH FOI files received from April 1, 2020 to March 31, 2023.

Findings showed that during the period under review VCH struggled with processing and responding to FOI requests in compliance with FIPPA, and often failed to meet its duty to assist obligations. Consistent themes included:

- considerable delay in responding to FOI applicants;
- incorrect application of FIPPA;
- lack of sufficient communication with applicants; and
- lack of appropriate documentation in FOI files.

Across the sampled files, VCH responded to less than one-quarter of applicable requests within FIPPA's set benchmark of 30 business days, and took on average 80 business days to respond to requests. Disconcertingly, VCH failed to comply with FIPPA time limits to respond in 72% of sampled files. In cases where VCH did not respond to requests within FIPPA time limits, it took VCH an average of 74 additional business days to respond.

In approximately one-third of the sampled files, VCH did not provide written acknowledgement to applicants that it received their request, and applicants often raised issues with VCH concerning updates and the status of their FOI requests.

VCH also did not always notify applicants promptly of the need to pay an application fee. In these cases, VCH incorrectly calculated the 30-day time limit to respond, as it did not include

the days between receiving the request and notifying the applicant that a fee was due in the calculation.

The audit identified files where VCH did not conduct a search for responsive records, or only conducted a partial search, without clear rationale. Further, on multiple occasions VCH incorrectly applied time extensions, or extended the time limit when the original time limit to respond already passed.

Finally, one-third of all sampled files were missing typical documentation related to the processing of requests.

The OIPC recognizes that during the period audited, VCH's FOI system experienced issues such as the COVID-19 pandemic, which, at times, limited the capacity of certain VCH program areas and executive to attend to FOI matters. The pandemic placed intense pressure on the health system as a whole, and VCH was no exception.

However, during challenging times, transparency and accountability are crucial to maintaining public trust. Well-functioning FOI systems play a key part in maintaining this transparency and accountability. Compliance with FIPPA is not discretionary - it's the law, so public bodies must ensure their FOI programs do not buckle during times of pressure.

Since coming out of the pandemic, VCH has begun strengthening its FOI program and improving compliance with FIPPA's duty to assist requirements. VCH has improved its reporting relationships and support from executive for the FOI Office, including implementing new escalation procedures to prevent FOI requests from stalling. VCH has committed to hiring additional FOI staff and is designing a new file and document management system to assist with ensuring requests are responded to appropriately and within FIPPA time limits.

This report makes eight recommendations to VCH to improve its overall FOI processes and compliance with FIPPA. The recommendations call for VCH to implement additional FOI training, evaluate its FOI processes to eliminate delays in responding, improve file management and documentation, and expand and collate its categories of records for proactive disclosure.

While this report and its recommendations are directed toward VCH, other health authorities across BC should review this report and implement relevant recommendations.

Background & Methodology

The Office of the Information and Privacy Commissioner for British Columbia (OIPC) assesses the extent to which public bodies and private sector organizations protect personal information and comply with access provisions under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Personal Information Protection Act* (PIPA).

OIPC audit reports identify areas where an entity may excel, in addition to areas where it requires improvement to comply with legislation and guidelines. These reports also set out the OIPC's general expectations for fulfilling access to information and privacy protection practices.

The OIPC audited Vancouver Coastal Health's (VCH) freedom of information (FOI) program under s. 42(1)(a) of FIPPA. Like past OIPC audits of other public bodies' access to information processes, this audit focused on whether VCH met its duty to assist applicants.¹

The OIPC proactively selected VCH's FOI program based on a review of access complaints and requests for review involving public bodies between April 1, 2020 and March 31, 2023. During this period the OIPC conducted 33 requests for review² and examined 30 deemed refusals³ related to VCH. The OIPC also investigated⁴ 24 access complaints related to VCH, with most complaints relating to duties required by FIPPA, adequate search, and time extensions taken by VCH.

Scope and methodology

This audit focused on the duty to assist provisions found in s. 6(1) of FIPPA. Generally, this included examining:

- documentation of FOI requests, searches for and review of relevant records, and responses to applicants;

¹ See [F18-02 City of White Rock Duty to Assist](#), [F18-01 WorkSafe BC Management of access and privacy requests and complaints](#), and [F16-01 City of Vancouver Duty to Assist](#).

² A person who makes an FOI request to a public body may ask the Commissioner to review a public body's decision, act, or failure to act, related to the FOI request (other than to require an application fee). A person may also ask the Commissioner to review a matter that could be the subject of a complaint under section 42(2) of FIPPA. OIPC staff are authorized by the Commissioner to investigate and mediate a resolution to a matter under review.

³ If a public body does not respond to the request within the time permitted by FIPPA (whether or not an extension has been applied), FIPPA considers this as a decision by the public body to refuse access to the record.

⁴ In addition to conducting reviews, OIPC staff may conduct investigations to ensure compliance with any provision of FIPPA or the regulations.

- compliance with legislated timelines, and frequency of deemed refusals;
- content of responses and the adequacy of searches for records;
- occasions of no responsive records and denial of access to records; and
- application or processing fees charged.

The basic methodology for this audit included:

- interviews with VCH FOI staff;
- review of VCH FOI datasets;
- collection and analysis of a representative sample (n=350) of VCH FOI files received during April 1, 2020 to March 31, 2023;
- examination of written materials pertaining to VCH's FOI program; and
- review of any related OIPC files or orders.

Application of FIPPA

FIPPA requires applicants to make requests for records in writing and provide sufficient detail to enable the public body to identify the records sought.⁵

When an applicant makes a request, FIPPA requires the public body to assist the applicant by documenting requests when they are received, searching diligently for responsive records, and responding without delay.

Receiving requests

Upon receiving a request for records, it is imperative that the public body record the date received, as the statutory timeline for the 30-day response begins the next day.⁶ To assist applicants, the public body should also clarify, as needed, any aspects of the request to aid the search for records.⁷

Public bodies may establish a \$10 application fee for requests for general records.⁸ Public bodies must notify applicants when an application fee applies and may pause the time to respond from when the public body notifies the applicant of the fee until the fee has been paid.⁹

Separate and distinct from an application fee, a public body may also charge a processing fee if the time to locate, retrieve, produce, or prepare records for disclosure exceeds three hours, or for costs to provide a record including shipping and handling.¹⁰ The public body must first provide a fee estimate to the applicant. At this point, the time for responding to the request is paused. The time recommences after the applicant pays the required fee or deposit, or the public body waives the fee.¹¹

⁵ FIPPA s. 5(1).

⁶ Note that a “day” constitutes a business day and does not include Saturdays, Sundays, or public holidays: *Interpretation Act*, [RSBC 1996] c. 238 at ss. 25 and 29.

⁷ OIPC’s 10 Tips for Public Bodies Managing Requests for Records (<https://www.oipc.bc.ca/documents/guidance-documents/2016>).

⁸ Section 13(2) of the Freedom of Information and Protection of Privacy Regulation sets the application fee at \$10. A public body cannot vary the amount of the fee. FIPPA Section 75(3) provides that the application fee does not apply to a request for an applicant’s own personal information.

⁹ Investigation Report 23-01 Access application fee six-month review

¹⁰ FIPPA s. 75(1)(a). Schedule 1 of the Freedom of Information and Protection of Privacy Regulation, B.C. Reg. 155/2012 provides a schedule of the maximum amount of fees that public bodies may charge for services.

¹¹ FIPPA s. 7(4). A public body must use its discretion in determining whether to charge applicants a fee and must consider waiving fees if the applicant makes a written request. Reasons for requesting a fee waiver include an

Searching for responsive records

After receiving and, if necessary, clarifying, requests for records, public bodies must conduct a search for responsive records. Efforts in searching for records must conform to what a fair and reasonable person would expect the public body to do or consider acceptable. As such, public bodies should:

- train and provide guidance to employees on the typical steps for searching for responsive records;¹²
- train employees on records management, records retention, and the appropriate storage of records;¹³
- adequately document decisions and understand the requirements for retention of particular records;¹⁴
- maintain a record that includes a reasonably detailed description of what the public body did to search for responsive records;¹⁵ and
- be able to describe potential sources of records, sources searched, sources not searched (and reasons for not doing so), and how much time staff spent searching records.¹⁶

Responding to applicants

FIPPA requires that “a public body make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.”¹⁷

applicant’s ability to pay, their assertion that the record relates to a matter of public interest, or “for any other reason it is fair to excuse the payment.”

¹² OIPC’s 10 Tips for Public Bodies Managing Requests for Records (<https://www.oipc.bc.ca/documents/guidance-documents/2016>).

¹³ OIPC’s 10 Tips for Public Bodies Managing Requests for Records (<https://www.oipc.bc.ca/documents/guidance-documents/2016>).

¹⁴ OIPC Investigation Report F15-03, Access Denied: Record Retention and Disposal Practices of the Government of British Columbia at p. 60 (<https://www.oipc.bc.ca/documents/investigation-reports/1783>); see also the joint Press Release issued on January 25, 2016 by Canada’s Information Commissioners, Information Commissioners Call on Governments to Create a Duty to Document (<https://www.oipc.bc.ca/announcements/1904>).

¹⁵ OIPC Investigation Report F15-03, Access Denied: Record Retention and Disposal Practices of the Government of British Columbia at p. 47, para. 7 (<https://www.oipc.bc.ca/investigation-reports/1874>).

¹⁶ OIPC Order 00-32 at p. 5 (<https://www.oipc.bc.ca/orders/603>).

¹⁷ FIPPA s. 6(1).

Without delay

FIPPA requires public bodies make every reasonable effort to respond sooner than the required 30 business days.¹⁸ If the public body cannot meet the deadline, it may take a 30-day extension if:

- the applicant did not provide sufficient detail to identify the record(s) requested;
- the request involves a large number of records such that meeting the time limit would unreasonably interfere with public body operations;
- more time is required to consult with a third party; or
- the applicant has consented to an extension.¹⁹

The Commissioner may also permit further time extensions, as appropriate.²⁰

When responding to requests for records, FIPPA requires public bodies to tell applicants:

- if they are entitled to access the record or part of the record;
- where, when, and how access will be given; and
- if access to the record or part of the record is refused, the reasons for refusal (including the section of FIPPA), contact information for an employee of the public body who can answer questions, and that the applicant may request a review by the OIPC.

Openly, accurately, and completely

Public bodies may withhold certain information from applicants.²¹ Some of the exceptions are mandatory under FIPPA, meaning that the public body must withhold the information, and some are discretionary. Public bodies must conduct a line-by-line review of records and sever only information that meets these discretionary or mandatory exceptions.

Public bodies must also provide applicants with reasons for refusing records or portions of records and include the section(s) of FIPPA that they based the refusal or severing. If the public body does not find records responsive to a request, the OIPC also expects them to provide a basic explanation to the applicant as to why no records were found.

¹⁸ FIPPA s. 7(1) and OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>).

¹⁹ Applicant consent must be in writing and be done in a manner that specifies the period of time of the extension for which the applicant is providing consent.

²⁰ FIPPA, s. 10(2).

²¹ See Part 2 of FIPPA (ss. 12 through 22.1).

Requests for review and complaints to the OIPC

If an individual is not satisfied with how a public body has handled their personal information or a public body's response to a request for information, the individual can complain to or request a review by the OIPC.²² The OIPC may open a file to investigate the matter.

The OIPC has the authority to direct a public body to attempt to resolve the complaint if:

- a duty imposed under FIPPA has not been performed;
- a time extension for responding to a request is not in accordance with s. 10 (1) of FIPPA;
- a processing fee required under FIPPA is inappropriate;
- a requested correction to personal information has been refused without justification;
or
- personal information has been collected, used, or disclosed in contravention of FIPPA.

²² For the purposes of requesting a review, the failure of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record, FIPPA s. 53(3).

VCH FOI Processes

VCH is one of five regional health authorities in British Columbia, serving more than 1.25 million residents from Vancouver and Richmond up through the Sunshine Coast and as far as Bella Bella and Bella Coola. VCH has approximately 30,000 staff, 12 hospitals, and several other services and programs such as community-based residential and home health care, and mental health and addiction services.²³

For the purposes of FIPPA, the Chief Executive Officer is Head of VCH. VCH's Senior Executive Team and the Chief Privacy Officer have delegated authority to exercise any power of the Head as set out in FIPPA, subject to any limitations and restrictions set by the Chief Executive Officer. Further, the Chief Executive Officer has final decision-making authority in determining what information is released from VCH records.²⁴

VCH's Lead Counsel, Privacy/FOI & Chief Privacy Officer has delegated responsibility for managing VCH's proactive disclosure program and for ensuring VCH's responses to FOI requests comply with FIPPA.²⁵ This position also manages VCH's FOI Office that currently includes three FOI Coordinators and a FOI Administrator. As needed, the FOI Office also utilizes two external FOI Coordinators and is in the process of hiring a new FOI manager position to assist the FOI Office carry out its functions. Though, VCH reported that the number of available FOI staff was often down to one FOI Coordinator during the period audited.²⁶

VCH's FOI Office is one of several teams within VCH's Legal Services and Privacy department. The FOI Office is responsible for receiving, processing, and responding to FOI requests for general records, such as VCH corporate records. VCH's Health Records or Employment Records teams are generally responsible for responding to requests strictly for personal health records or employee records, respectively. However, there are circumstances where an applicant may request all information about themselves broadly. When this occurs, the FOI Office and the Health Records or Employee Records teams coordinate in responding to the request.²⁷

²³ See <https://www.vch.ca/en/about-us/who-we-serve> and <https://www.vch.ca/en/careers/why-work-vch>.

²⁴ 2.4.1 - VCH Policies on Transparency and Freedom of Information.

²⁵ 2.4.2 - VCH Policies on Transparency and Freedom of Information.

²⁶ April 30, 2024, Interview with VCH FOI staff.

²⁷ July 5, 2023, Interview with VCH FOI staff.

Vancouver Coastal Health standard FOI response process



Receiving requests

VCH provides information on its website detailing how an applicant can make an FOI request, the difference between corporate and personal records (such as personal health or employee records), and how applicants may request each type of record.²⁸

VCH does not require applicants to submit FOI requests in a specific format.²⁹ Applicants can make an FOI request for corporate records to VCH by mail, fax, email, or online through VCH's website.³⁰

²⁸ Applicants requesting personal health records, are instructed to complete the [authorization for the Release of Health Records form](#) and submit the completed form in person, by fax, or by mail to the Health Record Department at the location where the applicant received medical care. See <https://www.vch.ca/en/patients-visitors/health-records-privacy/request-health-record>. Applicants requesting employment records are instructed to email their request to VCH. See <https://www.vch.ca/en/about-us/accountability/freedom-information>.

²⁹ 2.3.1 - VCH Policies on Transparency and Freedom of Information.

³⁰ <https://www.vch.ca/en/request-corporate-records>.

If an applicant sends a written FOI request to somewhere within VCH other than the FOI Office, VCH staff forward the request to the FOI Office for processing.

Upon receiving a written FOI request for records, it is VCH's policy to review the request to determine whether the records may be provided routinely, or whether the request should be processed as an FOI request. Starting August 2022, VCH also reviews the request to determine if an application fee applies. If so, VCH will send a notification email along with the file number and payment instructions to the applicant. VCH will not process an FOI request that requires an application fee until VCH receives payment of the fee.

Searching for responsive records

Upon receipt of an FOI request, the FOI Office will send the appropriate VCH program area or staff either a request to search for records or a request for an estimate of the time it would take to search for and collect responsive records.³¹ FOI staff inform program areas that, should they believe that a search for general records will take longer than three hours, they are to wait for further direction before conducting the search.³² VCH expects that its staff will respond in a timely manner to requests from the FOI Office.³³

When the appropriate VCH program area or staff provide the FOI Office with an estimate of the time it would take to search for and collect responsive records, the FOI office determines whether processing fees are applicable.³⁴ If applicable, VCH sends the fee estimate to the applicant. VCH may require an applicant to pay all or part of the processing fee before processing the FOI request. VCH suggests that applicants narrow their requests as much as possible to reduce fees, such as specifying a date range or describing which staff member or department is likely to have the requested information.³⁵

Should processing fees not apply, or if they have been paid, FOI staff direct the appropriate program area or staff to search for records and provide all unvetted responsive records to the FOI Office. Where possible, staff provide the records to the FOI Office in electronic format.³⁶ The FOI Office consults with and assists VCH program areas or staff as necessary or upon request.³⁷

Typically, the FOI Office reviews the records provided to determine if any records must not or may not be disclosed. Based on that determination, the records are severed and sent to the

³¹ 2.3.1 - VCH Policies on Transparency and Freedom of Information.

³² FIPPA does not allow public bodies to charge a processing fee for the first three hours.

³³ 2.3.3 - VCH Policies on Transparency and Freedom of Information.

³⁴ VCH does not charge fees for records containing an applicant's personal information or for the first three hours spent searching for and retrieving records. <https://www.vch.ca/en/about-us/accountability/freedom-information>.

³⁵ <https://www.vch.ca/en/about-us/accountability/freedom-information>.

³⁶ 2.3.3 - VCH Policies on Transparency and Freedom of Information.

³⁷ 2.3.4 - VCH Policies on Transparency and Freedom of Information.

applicant, including the reasons for severing, and which section of FIPPA authorizes it. At times, VCH program areas or staff assist the FOI Office with severing. The appropriate program areas or staff (such as the department that provided the records, legal counsel, or executive) review and sign off on the severing.

In circumstances where a program area reports that there are no records responsive to an FOI request, VCH stated that FOI staff retain the communication with the program area, should it be required. In certain circumstances, FOI staff may inquire further with the program area or may request another program area to search for records if they think records may exist elsewhere. FOI staff request program areas provide reasoning for why no records were located to ensure an explanation can be provided to applicants, and as evidence of searches conducted.

Notifying VCH Communications & Public Affairs

The FOI Office notifies VCH Communications & Public Affairs about FOI requests that are likely to result in VCH receiving questions from the public, media, government, elected officials, or union representatives. Notification is provided so that Communications & Public Affairs may assist VCH staff in responding to such questions.³⁸

Typically, the FOI Office notifies Communications & Public Affairs at least three business days before it responds to applicants.

Responding to applicants

VCH's policy stated that staff make every reasonable effort to respond to FOI requests openly, accurately, completely, and without delay, in accordance with time limits set out in FIPPA.³⁹

Where possible, VCH responds in electronic format to applicants and provides records in the format requested by the applicant, where appropriate and practical.⁴⁰

VCH's policy is to protect confidential corporate and personal information by withholding or redacting information as permitted or required by law. If any part of the records were severed VCH is to notify the applicant including the reasons for severing. FOI staff assist applicants by providing further clarification concerning FOI request responses. FOI staff also assist applicants with how to make subsequent requests that may arise from an applicant's original request.

³⁸ 2.3.2 - VCH Policies on Transparency and Freedom of Information.

³⁹ 2.2 - VCH Policies on Transparency and Freedom of Information.

⁴⁰ 2.2 - VCH Policies on Transparency and Freedom of Information.

Audit Findings

From April 1, 2020 to March 31, 2023, VCH received a total of 519 FOI requests. While this figure mostly represents requests for general records, it does capture some broader requests that, in some circumstances, include personal information such as employment records.

By fiscal year, VCH received:

- 2020/21 – 218 requests
- 2021/22 – 172 requests
- 2022/23 – 129 requests

From these 519 requests, the OIPC selected a representative random sample of 350 of VCH's FOI requests for records received in the 2020/21 to 2022/23 fiscal years.⁴¹ Analysis and findings presented in this report provide an accurate illustration of VCH's FOI request files processed during this time, within a 3% margin of error, 19 times out of 20.⁴²

Receiving requests

Based on the sample, the types of records applicants requested from VCH commonly included:

- emails or other correspondence;
- contracts or other agreements;
- personal or employment records;
- briefing notes, meeting minutes, and agendas; and
- COVID-19 related statistics and reports.

⁴¹ During the period of sample selection, VCH maintained a fiscal year of April 1st to March 31st.

⁴² The margin of error may differ for analysis of each data point. For example, on the key question of what percent of requests did VCH respond to within legislated timelines, there is a 95% chance that the real result is within approximately 2.7% of the measured result of 28%.

Across the sample, the vast majority of requests (92%) to VCH came from individual and media applicants. Table 1 shows the percentage of FOI requests by each applicant type:

Table 1 – VCH Requests Received by Applicant Type (2020/21 to 2022/23)		
Applicant Type	Number of Requests	Percent
Individual	217	62%
Media	106	30%
Union	13	4%
Lawyer / Other professional group	9	3%
Interest group	4	1%
Public body	1	<1%

Across the sample, VCH received requests from 208 unique applicants, with 10 of those applicants making five or more requests. These 10 applicants accounted for 32% of FOI requests to VCH, with each having submitted between five and 32 requests. Said another way, 5% of VCH’s FOI applicants made one-third of the FOI requests it received.

Acknowledgement of requests

Overall, VCH sent acknowledgement letters to applicants 70% of the time (246 of 350 files). An acknowledgement letter is important as it serves as written confirmation to an applicant that VCH received their request and the date it was received. Secondly, the letter informs an applicant when they can expect to receive the response.

VCH sought clarification from applicants in 16% of sampled requests (56 requests). Of these, the OIPC found issues with 14 requests, including that:

- VCH sought clarification when it did not appear necessary,⁴³ or conversely did not seek it when it appears clarification was necessary; and
- VCH sought clarification after the authorized time limits passed, or otherwise did not seek clarification from applicants earlier in the process, which subsequently increased the time it took VCH to respond to requests.

⁴³ For example, FOI Office staff requested an applicant provide additional details about the records requested (such as the subject lines of emails). After the applicant questioned the need to provide further details, the FOI Office determined it already had sufficient information to process the request and that it was not necessary for the applicant to provide additional information or clarification to conduct a search for records.

During the COVID-19 pandemic, VCH received a higher number of FOI requests compared to previous years.⁴⁴ VCH stated that, because of this, its FOI staff resources and program area staff were stretched more than usual. This resulted in acknowledgement letters not being sent in all cases and in instances where clarification was not properly sought. VCH stated that these concerns were isolated to challenges experienced during the COVID-19 pandemic, and not characteristic of the FOI Office's practices more broadly. VCH stated that the FOI Office has since acquired appropriate staff to monitor and ensure acknowledgement letters are sent and that adequate clarification is sought from applicants.⁴⁵

It is imperative that VCH consistently clarify access requests with applicants when necessary to ensure it does not interpret the request too narrowly, and to maximize the likelihood of producing records that are responsive to the applicant's request. VCH should continue monitoring its handling of incoming FOI requests to ensure it acknowledges requests upon receipt and seeks clarification from applicants when required.

Application fees

Notification of Application Fee

VCH began charging the application fee in August 2022.⁴⁶ Since implementation, when an applicant submits a request for general records, VCH reviews the request to determine if an application fee applies. If so, VCH notifies the applicant of the \$10 application fee and that it must be paid before VCH will proceed with processing the request.

VCH took an average of one to two business days to notify individuals that an application fee applied and must be paid before VCH would proceed with the request. In five cases, VCH took six to seven business days to notify the applicant that a fee was due. As recommended in [Investigation Report F23-01: Access application fee six-month review](#), public bodies that

⁴⁴ July 5, 2023, Interview with VCH FOI staff.

VCH FOI request volume data, received on May 10, 2024.

⁴⁵ April 30, 2024, Interview with VCH FOI staff.

⁴⁶ Findings on VCH's administration of the application fee reflect only the nine-month period from August 2022 to the end of the sample period, March 2023.

Remember:

ACKNOWLEDGEMENT OF REQUESTS

Public bodies should send an acknowledgement to all applicants upon receiving their requests for records, and promptly seek clarification when needed.

APPLICATION FEES

Public bodies that administer an application fee for general records should clearly inform applicants *without delay* when a fee applies.

administer an application fee for general records should clearly inform applications without delay when a fee applies.

A public body's requirement to directly notify the applicant that they are to pay an application fee affects how the time limit for a public body to respond is calculated. The time limit to respond starts the day after an FOI request is received and is not paused until the day the public body notifies the applicant that a fee is due.⁴⁷ It is VCH's responsibility to notify the applicant without delay that a fee is owing and any day of delay in notifying is counted against the public body's 30-day time limit.

VCH did not start counting the 30-day time limit to respond until the applicant paid the application fee, which means that the days between VCH receiving the request and VCH notifying the applicant that a fee was due were not included in the calculation of days to respond.

Recommendation 1

VCH must begin counting the time limit to respond on the day after an FOI request is received, and only suspend the time *after* notifying the applicant of the requirement to pay the application fee.

Since reviewing the findings and recommendations of this report, VCH stated that it has recently taken steps to ensure that the calculation of the time limit is accurate. Further, it stated that it now prioritizes notifying applicants when a fee is owing within 24 hours and any delay in notification is counted against VCH's time limit.

Payment of Application Fee

From August 2022 to March 2023 VCH charged the application fee on 46 of the sampled requests for general records. Applicants paid the application fee on 29 of those requests (28 by cheque and one by money order). In four files, the fee was transferred to VCH from other public bodies,⁴⁸ and VCH waived the fee on one other file. In the remaining 12 cases, applicants did not pay the fee and the requests were treated as abandoned.

⁴⁷ See Investigation Report F23-01: Access application fee six-month review for more discussion on how application fees impact calculating time limit to respond. <https://www.oipc.bc.ca/documents/investigation-reports/2578>.

⁴⁸ Occasionally, an FOI request is submitted to a public body, but the responsive records are actually those of a different public body. In these cases, the first public body may transfer the request (and application fee, if relevant) to the second public body.

When VCH started charging the application fee in August 2022, the only option VCH made available was for applicants to send a cheque or money order through regular mail. Six applicants inquired about alternative methods to pay the fee, commonly requesting to pay the application fee by credit card or online.

Applicants took an average of 10 business days to pay an application fee (from the time VCH notified applicants about the fee until the time VCH received payment). The time limit for VCH to respond to requests was on hold until VCH received payment. Payment methods (such as cheques) that take longer to process than more expedient payment methods (such as credit cards) meant applicants waited longer for VCH to start processing their requests and, ultimately, to receive a response.

[Investigation Report F23-01: Access application fee six-month review](#) discusses how limited payment options can result in delays and barriers for applicants making FOI requests and recommended that "[p]ublic bodies that administer an application fee should have multiple fee payment options available to ensure expediency and accessibility for all applicants. This should include an option that permits an applicant to maintain anonymity."

The OIPC would have recommended that VCH immediately expand payment options for the application fee to include payments by credit card and an option to maintain applicant anonymity. However, on July 6, 2023, VCH began accepting credit card payments by telephone and on May 6, 2024, started accepting e-transfer payment. The OIPC is satisfied to see VCH proactively expand its payment options. These additional payment methods provide applicants with greater choice in how to pay the application fee and allow for more expedient payment compared to sending a cheque or money order by mail.

Remember:

APPLICATION FEES

Insisting on forms of payment that are rarely used these days, such as cheques or money orders, may frustrate the right of access and be inconsistent with the statutory duty to assist.

Public bodies that administer an application fee should have multiple fee payment options available to ensure expediency and accessibility for all applicants. This should include an option that permits an applicant to maintain anonymity.

Proactive disclosure

As noted, VCH's Lead Counsel, Privacy/FOI & Chief Privacy Officer has delegated responsibility for managing VCH's proactive disclosure program. VCH has a policy⁴⁹ to develop and implement a proactive disclosure program to:

- identify types of records appropriate for proactive disclosure;
- create a system for publishing such records; and
- ensure consistency across the organization in publishing such records.

The general categories of records that VCH proactively discloses include, but are not limited to, financial statements, policies, health inspection reports, water quality reports, and overdose surveillance updates.⁵⁰ VCH's policies require that program areas or other applicable staff respond directly to requests for records that may be released routinely.⁵¹

Despite the policy, there were instances in the sampled files where applicants made requests for health inspection reports and VCH processed these as FOI requests instead of automatically releasing the reports or directing applicants to where they can locate the reports on VCH's website. In four requests, VCH charged an application fee before processing the requests and, in one request, VCH provided the applicant with a link to the health inspection report but only after the applicant requested VCH waive the processing fee.

Additionally, the OIPC could not easily identify and locate the categories of records VCH routinely releases without assistance of its FOI staff.⁵² Links to such records are located across various areas of VCH's website, and it would be difficult for the public to find some of these records without an extensive search.

[Investigation Report 20-01 Section 71: Categories of records available without a request](#)

examined public bodies' compliance with FIPPA's proactive disclosure requirements. Amongst other things, the report found that simply posting records and information online in an ad hoc manner does not meet the intent of the legislation. It is necessary for public bodies to have a more structured and organized approach to making records available.⁵³

⁴⁹ 2.1 - VCH Policies on Transparency and Freedom of Information.

⁵⁰ VCH provided 12 categories of records for proactive disclosure: Overdose Surveillance Updates, Insite User Statistics, Financial Accountability, Impact Reports, Service Reviews, Policies, The Chief Medical Health Officer Report, Physicians' and Nurse Practitioners' Updates, Facility Outbreak Data, Public Exposure Notifications (in limited circumstances), Inspection Reports, and Beach Water Quality Reports (Spring/Summer).

⁵¹ 2.4.4 - VCH Policies on Transparency and Freedom of Information.

⁵² The OIPC requested VCH provide the categories of records VCH makes available through proactive disclosure and where the public can find this information online.

⁵³ Finding 4, page 15. <https://www.oipc.bc.ca/documents/investigation-reports/2291>.

To align with its own policies on proactive disclosure and to reduce unnecessary delays for applicants requesting records that are routinely released, the OIPC recommends that VCH review common FOI requests and establish additional categories of records for proactive disclosure that could eliminate or reduce the need for such requests. For example, on the files sampled, applicants commonly requested access to VCH contracts.

The OIPC also recommends VCH consolidate its categories of records available for proactive disclosure and publish in an easily accessible location on its website, so that the public can identify what records are routinely released and know where to access them. When an applicant makes an FOI request for records that are routinely released, VCH should direct the applicant to the record without delay and without processing the request through FOI.

Recommendation 2

VCH should:

- review common FOI requests and establish additional categories of records for proactive disclosure that could eliminate or reduce the need for such requests;
- consolidate and publish all categories of records available for proactive disclosure, including links to those records to an easily accessible location on its website; and
- inform applicants when records are available without an FOI request and direct applicants to the record without delay.

Since reviewing the findings and recommendations of this report, VCH stated that it is currently working to develop standardized categories for disclosure and is improving the organization and search functions on VCH's public website.

Remember:

SEARCHING FOR RESPONSIVE RECORDS

Public bodies should direct program areas to search for records as soon as possible after receiving an FOI request.

Searching for responsive records

Requesting records from program areas

For requests that did not incur an application or processing fee, it took FOI staff an average of 17 business days to first contact program areas about a request.⁵⁴ This substantial delay at the outset of processing a request accounted for over half of the 30-day time limit to respond to the applicant, without even beginning the search for records.

FOI staff provided program areas with a time limit to conduct searches 55% of the time (160 of 289 files). When FOI staff did provide a time limit, they provided an average of six business days for program areas to respond with search results.

Receiving records from program areas

Program areas responded within the time limits provided by FOI staff 52% of the time. On average, program areas responded to FOI staff with the results of searches and, if applicable, records within 19 business days after receiving direction from FOI staff to search for records. Program areas provided records in pdf file format most of the time (108 files), followed by email (64 files). Other less common formats include Word documents, Excel documents, and JPG files.

When a program area did not respond within the specified number of days (either with the requested time estimate or search results), FOI staff would continually follow-up with the program area until a response was received. VCH stated that follow-up with program areas was common and occurred 91% of the time (90 of 99 files) when a response was not received. On average, it took FOI staff 32 business days to follow up with program areas for a response. Additionally, on 27 requests, FOI staff followed up with program areas more than once.

⁵⁴ First contact may include, for example, asking program areas if they are the area responsible for the requested records, clarifying request terms, asking for time estimates to search for records, or directing program areas to search for records.

Recommendation 3

When requesting program areas to search for records, VCH FOI staff should specify an expected date for program areas to provide records, and follow up promptly if searches for records become overdue.

Since reviewing the findings and recommendations of this report, VCH stated that it has hired additional FOI staff to improve file management of FOI requests and has conducted FOI education sessions with key departments and the Senior Executive Team.

Processing fees

Across the sample, VCH charged processing fees on 24 FOI requests, totaling \$23,670. Fee estimates ranged from \$75 to \$6,270, averaging \$946.80 per fee estimate.

On six occasions, applicants requested processing fees be waived. VCH denied waiving fees on four of these requests on the basis that they did not meet the threshold for disclosure in the public interest and that the processing fees charged were fair.

On one of the remaining two fee waivers, VCH suggested that the applicant resubmit their request at a later date, when the requested records would be more readily available, and the applicant could avoid processing fees. On the last request, VCH did not waive the fee, but it ultimately did not process payment of it.⁵⁵

In seven of the 24 requests, VCH provided the fee estimate *after* the authorized time limit to respond had already passed. This means that these responses were already unlawfully delayed when VCH charged the processing fee and placed the files on hold. VCH only continued processing the requests once payment was received resulting in applicants waiting longer for responses that were already overdue.

Recommendation 4

VCH should avoid actions, such as providing a fee estimate, that cause further delay when it is already late in responding to an FOI request.

⁵⁵ VCH responded to the request after FIPPA time limits expired. VCH did not process the applicant's cheque for the processing fees and instead destroyed the cheque when it provided a response to the FOI request.

Since reviewing the findings and recommendations of this report, VCH stated that it has created internal processes to ensure that fee estimates are not provided after the authorized time limit to respond has passed.

Quality of searches

Overall, VCH did not appear to conduct a fulsome or complete search for responsive records in 15% (53 of 350) of requests, though this improved over the years reviewed. See Table 2.

Table 2 – Percent of incomplete Searches by Fiscal Year		
2020/21	2021/22	2022/23
25% (28 of 111 requests)	19% (24 of 129 requests)	<1% (1 of 110 requests)

In some cases, the rationale for not conducting a search or only conducting a partial search was not evident. In other cases, program areas did not conduct a search because VCH believed the records would or could not be disclosed. It was presumptive of VCH to deny disclosing records without first searching to determine what records existed and reviewing them line-by-line to verify what portions of the records could not be released. Without a proper search to confirm what records exist, adequate severing is not possible.

The OIPC provides [guidance to assist public bodies with conducting adequate searches](#) for records, including tips to help FOI staff better assess if program areas have conducted adequate searches and to ensure that responsive records were not overlooked.

VCH reported that during the pandemic certain program areas and executive members of VCH had limited capacity to respond to FOI matters, and in specific circumstances were restricted⁵⁶ on what records they believed could be disclosed.⁵⁷ This resulted in program areas simply not conducting searches and prevented the FOI Office from obtaining fulsome search results. VCH stated that since coming out of the pandemic it is better able to conduct searches, and has new technological ability for FOI staff to search the email accounts of other VCH staff for responsive records.⁵⁸

Public bodies must be properly staffed to conduct adequate searches. While the COVID-19 pandemic strained public body resources, including VCH, their obligations to respond to

⁵⁶ VCH staff believed they could not disclose records related to the COVID-19 pandemic because they did not have authority under the *Public Health Act* to do so. In [Order F20-57](#), former Commissioner McEvoy rejected arguments that, during an emergency, the *Public Health Act* overrides the disclosure duty under s. 25(1)(a) FIPPA.

⁵⁷ April 30, 2024, Interview with VCH FOI staff.

⁵⁸ April 30, 2024, Interview with VCH FOI staff.

requests do not change. VCH must ensure it has adequate resources both within the FOI Office and within program areas to meet its obligations under FIPPA. VCH stated that it already intends to hire an additional FOI Coordinator and is contemplating a new FOI Manager position. However, VCH should also examine whether any additional resources are needed to assist program areas conduct searches for records.

Responding to applicants

Without delay

VCH responded to 24% of sampled requests (66 of 272 files) within 30 business days - the benchmark that FIPPA establishes as the timely expectation for response. This means that VCH did not meet FIPPA's benchmark in three out of every four requests.

Figure 1 shows the percent of requests VCH responded to within 30 business days received each fiscal year.

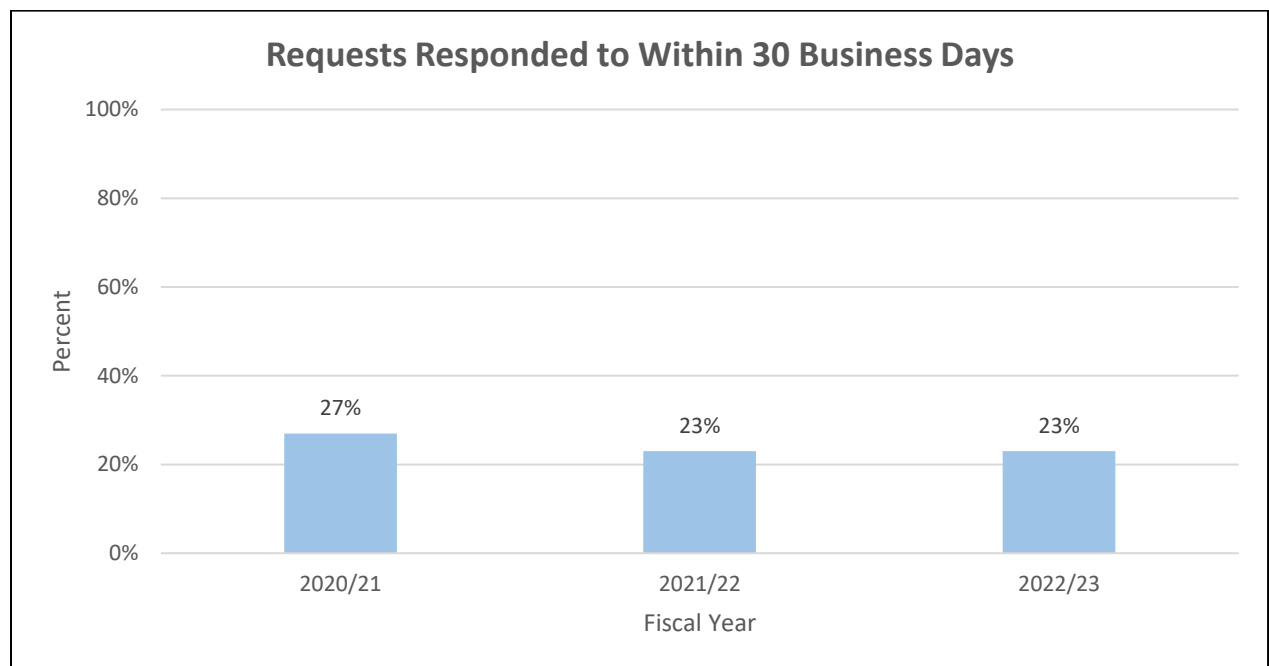


FIGURE 1

It is not surprising that VCH responses were not often timely, considering that it took FOI staff an average of 17 business days to direct program areas to search for records, and a further average of 19 business days for program areas to conduct the search.

Overall, VCH took an average of 80 business days to respond to a request. While VCH was slowest to respond to requests received in 2020/21 and 2021/22, VCH improved its response times in 2022/23 to an average of 48 business days. See Table 3.

Table 3 – Average Business Days for VCH to Respond		
2020/21	2021/22	2022/23
85 Days	102 Days	48 Days

By applicant type, VCH was the slowest in responding to requests made by media applicants, followed by union and individual applicants. See Table 4.

Table 4 - Average Days to Respond by Applicant Type				
	Overall	2020/21	2021/22	2022/23
Media	116	120	171	57
Union	87	182	73	N/A ⁵⁹
Individual	66	66	82	46
Lawyer / Other professional group	52	N/A	137	35
Interest group	35	N/A	N/A	35
Public body	29	N/A	N/A	29

Over the period audited, the average number of pages per request declined from 60 pages in 2020/21 to 47 in 2021/22 and further to 38 in 2022/23. Based on this, it is not likely that the volume of pages processed for requests was a substantial reason for VCH’s delayed responses.

It is likely that a combination of factors impacted the timeliness of VCH responses. These include delays by the FOI Office in directing program areas to search for records, their inconsistency in specifying the date by which program areas are to provide the records, and their inability to enforce time limits on program areas impacted by the pandemic.

[Support from executive and programs areas](#)

FOI staff stated that during most of the period audited, VCH was at the epicenter of responding to the public health crisis caused by the COVID-19 pandemic. There was sensitivity around health information related to the pandemic and many program areas and executive members

⁵⁹ N/A indicates that there were no applicable requests responded to.

of VCH had limited capacity to respond to FOI matters. This made it challenging to search for records and for the FOI Office to obtain sign-off to release records.⁶⁰

FOI staff stated that since coming out of the pandemic and knowing that this audit would identify deficiencies within VCH's FOI system, support from executive has improved and that the importance of FOI is more broadly recognized across VCH. The legal team, which the FOI Office sits under, has been elevated within the VCH corporate structure – and is now reporting to VCH's CEO. FOI staff indicated that there is now greater awareness amongst VCH board members and executive about the FOI Office, its function, and VCH's legal requirements under FIPPA.

FOI staff indicated that there is now an escalation procedure in place that allows VCH's Lead Counsel, Privacy/FOI & Chief Privacy Officer to go directly to management for program areas when FOI requests stall. Additionally, the FOI Office has established a process for select FOI staff to regularly meet with members of executive to discuss FOI requests that require the attention of executive to move them forward.⁶¹

File stagnation

Overall, 21% of sampled requests (73 of 350) remained in a period of stagnation, meaning several weeks or months went by without any apparent or documented work by VCH to move the request along. Prolonged periods of presumed inactivity may have contributed to VCH not meeting legislative time limits and causing applicants to wait much longer for VCH to respond.

One way to monitor FOI request files and address them before they become stagnant is through file monitoring. VCH currently tracks its FOI requests using Excel and internal folders and communicates with program areas or other internal staff by email. VCH stated that its current systems are inefficient, resulting in manual communication back and forth: to assign tasks, check on the status of files, and follow up with colleagues.

VCH advised that it will move to a new document and file management system that will have the following improvement over its existing system:

- ability to more easily assign files to different stakeholders and track progress;
- improved version control of documents;
- central location for staff to upload and process records and prepare responses; and
- ability to set deadlines and send automatic reminders and updates.

VCH is currently designing the new tracking and management system and it may take up to one year before it is ready for VCH to use. The OIPC is encouraged that VCH has proactively taken

⁶⁰ April 30, 2024, Interview with VCH FOI staff.

⁶¹ April 30, 2024, Interview with VCH FOI staff.

steps to modernize its FOI request management system to improve efficiency and reduce delays to respond to requests. The OIPC recommends that VCH proceed with implementing a new file management software to improve the efficiency of its FOI system.

Recommendation 5

VCH should implement an improved file management system to better manage and track its responses to FOI requests.

Since reviewing the findings and recommendations of this report, VCH stated it upgraded the tracking system from Excel spreadsheets to a new software platform that enables better project management, automated workflows, dashboards and reporting. VCH also reported that it is transitioning to a new document tracking and management system, which will provide further document integration, automation and efficiency towards their FOI processes.

[Compliance with FIPPA time limits](#)

Across the sample, VCH failed to comply with FIPPA time limits 72% of the time. This means that VCH delayed responses when it had no legal authorization to do so in roughly seven out of every ten requests. See Figure 2 for a year-over-year breakdown.

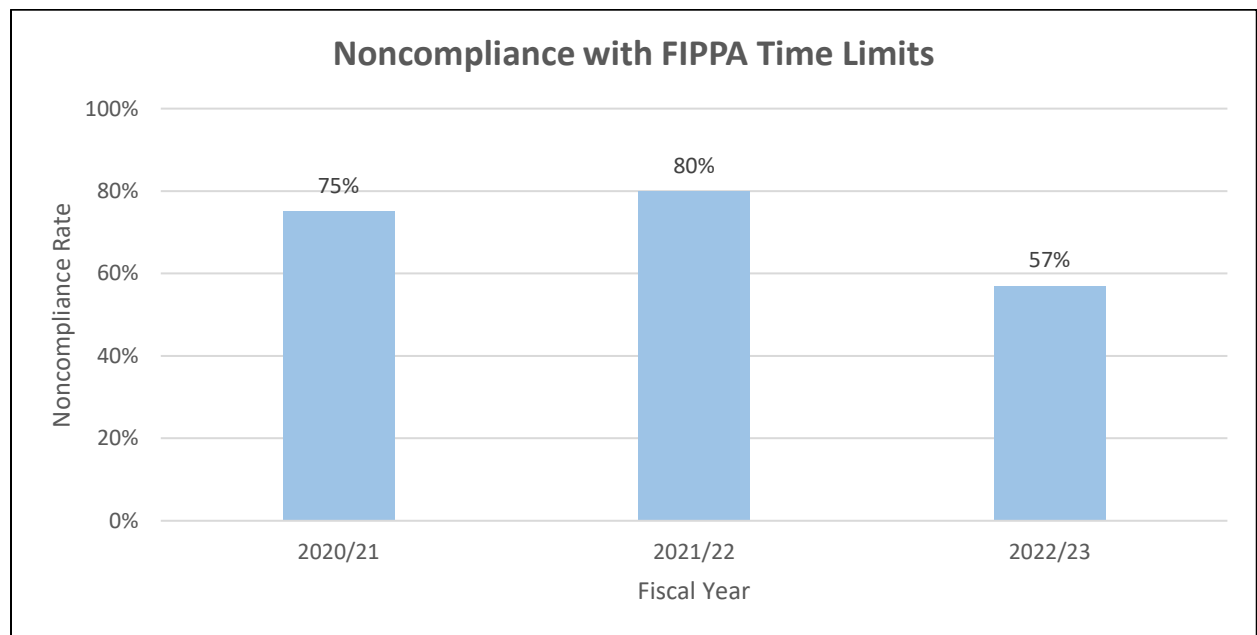


FIGURE 2

Further, applicants who made more FOI requests were less likely to receive responses within FIPPA time limits. For applicants that made fewer than five FOI requests, VCH failed to respond to their requests within legislated time limits on average 59% of time. Meanwhile, for the 10 distinct applicants that made five or more FOI requests, VCH failed to respond to their requests within legislated time limits on average 73% of time.

Looking at applicant type, media applicants were least likely to receive responses to their FOI requests within FIPPA time limits. For example, VCH failed to respond to media applicants within legislated time limits 80% of the time, compared to requests from individual applicants, where VCH failed to respond within legislated time limits on average 59% of the time.

In cases where VCH failed to respond to requests within legislated time limits, it took VCH an average of 81 *additional* business days in 2020/21 and 99 *additional* business days in 2021/22 to provide a response to the applicant. By 2022/23 it took VCH an average of 24 *additional* business days to respond. While VCH reduced the response delay in the final year of the sample, it still far exceeded FIPPA time limits in these cases.

Recommendation 6

VCH should evaluate its FOI processes to identify and correct any lags in responding to all requests within the time limits authorized by FIPPA.

Since reviewing the findings and recommendations of this report, VCH reported that it has made significant progress in addressing the key issues that create delay for FOI requests. Some of the changes include hiring additional FOI staff, acquiring new tools to search and retrieve emails, and adapting processes to ensure accurate interpretation of requests, and ensuring program areas conduct fulsome searches. One example of a new process is assigning an FOI advisor to directly support the Chief Medical Health Officer in their FOI duties.

Time extensions

Overall, VCH applied a time extension on 17% of requests (61 of 350 requests). This included 52 requests with extensions taken by VCH only, six files with extensions permitted by the Commissioner only, and three files with both extensions by VCH and extensions permitted by the Commissioner. Notably, the percent of time extensions applied increased from 9% in 2020/21 to 25% in 2022/23.

VCH's most common reason for taking a time extension was due to a large number of records requested or needing to be searched and that meeting the time limit would unreasonably

interfere with the operations of VCH (47 time extensions taken). Less common reasons VCH took a time extension included:

- VCH needed more time to consult with a third party or other public body before VCH could decide whether or not to give the applicant access to a requested record (four time extensions taken).
- The applicant did not give enough detail to enable VCH to identify a requested record (two time extensions taken).

[Incorrect application of s. 10\(1\)\(b\)](#)

On 36 requests, VCH incorrectly applied s. 10(1)(b) when extending the timeline to respond. In these circumstances, VCH notified applicants that an extension was required due to a large number of records requested or needing to be searched and that meeting the original time limit would unreasonably interfere with the operations of VCH. However, FOI staff had not yet received a time estimate or other information from the program area involved to suggest that:

- there was a large volume of records requested / needed to be searched; and
- that meeting the original time limit would unreasonably interfere with the operations of VCH.

In one example, an applicant complained to the OIPC about VCH's claim that it required a time extension due to a large number of records under s. 10(1)(b). The applicant stated that the request was for a three-page record and disputed the reason VCH provided for the extension. The OIPC subsequently confirmed VCH's reasoning was inadequate and that the time extension was unwarranted. By the time the request was concluded, VCH had unlawfully delayed its response by 30 business days.

In another case, VCH took a time extension under s. 10(1)(b), notifying the applicant that there were a large number of records to search and meeting the time limit would unreasonably interfere with the operations of the public body. The file records show that when the FOI Office notified the applicant of the time extension, it had not yet notified the program area and had not yet requested an estimate of time it would take the program area to conduct the search. The FOI Office notified the program area about the request 33 business days after the request was received. When the program area responded, it stated the search would take less than three hours and would provide the records within one business day. Further, the responsive records only consisted of nine pages.

These examples are concerning and show that VCH applied s. 10(1)(b) to extend the time limit to respond when there was no reason to believe searches contained a large volume of records and that meeting the original time limit would interfere with VCH operations. In the examples provided, the time extensions VCH took were unwarranted.

Extensions and holds after time limit passed

In over 20 requests, VCH took a time extension after the original time limit to respond passed. In such cases, VCH took an extension under s. 10(1) and provided applicants with notification of the time extension after the original 30 business day time limit had passed. In these situations, VCH sent notification to the applicant to inform them the time limit to respond was extended. However, there was no authority under FIPPA for VCH to extend the time limit in such circumstances.

In 13 files, VCH requested clarification or provided a processing fee estimate to applicants after the time limit to respond already passed. When this occurred, VCH notified applicants that the time limit to respond was on hold until the applicant either provided the clarification requested or paid the processing fee, as applicable.

In these circumstances, the OIPC could recommend that VCH apply extensions only where it legitimately meets a provision under s. 10 of FIPPA for the extension, and to apply the extension *before* the authorized time limit has passed. However, these are already required under the legislation.

Likewise, the OIPC could also recommend that VCH provide applicants with processing fee estimates and seek clarification from applicants *before* authorized time limits have passed. The previous recommendation (for VCH to evaluate its FOI processes to identify and correct any lags to respond to all requests within the time limits authorized by FIPPA) should include regular compliance monitoring to ensure the appropriateness of time extensions, as well as the timing of fee estimates and seeking clarification from applicants.

FOI staff cited the benefit of more FOI awareness and training within VCH to strengthen VCH's ability to respond to FOI requests.⁶² Training is an important component on the path to a successful FOI program and all VCH staff should be provided with training relating to FOI processes. Further, VCH staff involved in responding to FOI requests should be properly trained on FIPPA's time limits and time extensions.

⁶² April 30, 2024, Interview with VCH FOI staff.

Recommendation 7

VCH should provide mandatory routine training to all staff on:

- records management and retention,
- FIPPA and their responsibilities under the Act,
- VCH's FOI policies and processes, and
- conducting and documenting searches for records.

Since reviewing the findings and recommendations of this report, VCH has begun work on an organizational strategy to strengthen FOI awareness and records management processes. VCH plans to conduct education sessions with key program areas and to develop a mandatory education course for new hires and leaders.

Openly, accurately and completely

Severing

After responsive records are retrieved, a VCH staff member reviews the record to identify if severing applies. VCH staff reviewed 135 requests for severing and FOI staff were the most involved in this task. Once severing is completed, the records and proposed response to the applicant are then reviewed before FOI staff send the response.⁶³ For the most part, severing and review processes do not change based on applicant type. However, the Public Affairs department was involved in reviewing responses that involved media applicants.⁶⁴ See Table 5 for who conducted initial severing or review of that severing.

⁶³ The final review was conducted in 118 of the 135 requests.

⁶⁴ File documentation did not allow the OIPC to determine how long review by Public Affairs delayed responses to applicants.

Table 5 - Initial Severing and Severing Review		
Initial Severing		
Department	% of requests	No. of requests
FOI staff	87%	118
Program area staff	5%	7
Both FOI staff and program area staff	3%	4
Unknown ⁶⁵	5%	6
Severing Review		
Program area staff	82%	97
Program area staff and others (e.g. legal counsel, public affairs, external party)	8%	9
FOI staff	5%	6
Unknown ⁶⁶	5%	6

In total, VCH applied 247 exceptions to 127 requests,⁶⁷ with the most common being for disclosure harmful to personal privacy (45% of all exceptions). The second and third most common exceptions to disclosure were, respectively, for policy advice or recommendations (22%) and disclosure harmful to law enforcement (10%).

Response letters

Overall, 98% of VCH's responses to applicants (216 of 221) generally contained the necessary information such as:

- a summary of the request;
- if staff located responsive records;
- a description of reasons for severing or withholding information, including relevant sections of FIPPA;
- contact information for the OIPC including a link to the OIPC website; and
- a statement that the applicant can seek review of the response with the OIPC.

Records provided for review and released

VCH provided records in whole or in part 71% of the time (196 of 275 files). From 2020/21 to 2022/23, the percent of responses with records released increased from 63% to 79%.

⁶⁵ Unclear whether it was FOI or program areas staff that reviewed the records.

⁶⁶ Unclear which department reviewed the records.

⁶⁷ VCH did not apply an exception to every request it reviewed for severing.

No responsive records

There were 61 requests where VCH found no responsive records to release. In all but one case, VCH provided an explanation to applicants for the lack of records. The OIPC found that VCH's explanations appeared appropriate and provided sufficient detail for applicants to understand why VCH did not find responsive records.

Denial of access to records

Overall, VCH denied releasing records on 27 requests. When denying records, VCH provided applicants with the reasons for doing so in its response letters. Reasons given for withholding records included:

- creating the record would unreasonably interfere with the operations of the public body (nine instances);⁶⁸
- disclosure harmful to individual or public safety (five instances);⁶⁹
- disclosure harmful to a third party's personal privacy (11 instances);⁷⁰ and
- no authority to disclose information collected under the *Public Health Act* (nine instances).⁷¹

As discussed, in some instances, VCH denied access to records entirely without conducting searches to determine what records existed and could be released.

Issues raised by applicants during FOI request process

Eighty applicants from the sample raised issues with VCH during or after the processing of their FOI requests. Applicants primarily raised issues with VCH failing to provide updates or communicate about the status of their requests. In most cases, VCH had not responded to requests within the initial 30-day time limit, compelling applicants to contact VCH requesting an update. In a similar theme, applicants also raised issue with VCH not responding to requests within extended FIPPA time limits and for taking improper or unwarranted time extensions. Table 6 lists the number of issues applicants raised with VCH:

⁶⁸ FIPPA s. 6(2).

⁶⁹ FIPPA s. 19.

⁷⁰ FIPPA s. 22.

⁷¹ *Public Health Act* s. 91.

Table 6 - Issues Applicants Raised with VCH	
Issue	Count
Update / communication	57
Inadequate search	11
Late response	11
Response clarification	10
Time extension	7
Payment option	6
Fee waiver	5
Deemed refusal	3
Deny access	2
Time extension and inadequate search	1
Severing	1
Application fee	1

Overall, VCH was generally responsive and communicative with applicants when issues or concerns were raised. If the issue related to VCH simply acknowledging receipt of a request or providing a status update, VCH would typically provide acknowledgement or an update, when prompted by the applicant. In other cases, where an applicant requested clarification on a response, FOI staff often provided the requested clarification and, when necessary, consulted further with program area staff to resolve the applicant’s concerns.

However, not all issues or concerns raised by applicants were resolved or rectified. In certain cases, such as unlawfully delayed requests, there were limitations on the extent that an issue could be rectified after the fact. For example, an applicant raised concerns with VCH that it had not yet responded to a request that was unlawfully delayed. While VCH responded to the applicant’s concerns by apologizing for the delay and providing a revised time frame for when it expected to respond, the response was already past due, which could not be reversed.

It was evident that VCH made efforts to address concerns raised by applicants. However, some issues (such as initial acknowledgement of a request, progress updates, and responding within FIPPA timelines) are preventable and could have been avoided altogether, had VCH ensured that FOI request handling processes were consistently followed and that VCH adhered to the time limits, and time extension requirements set out in FIPPA. Likewise, issues that applicants raised about the lack of payment options available should occur less often going forward as VCH makes a broader range of payment options available for applicants to pay fees.

Documenting requests

Overall, typical documentation related to the processing of requests was missing in 32% (112 of 350) of all files. Over the period reviewed, the percent of requests missing documentation

decreased from 61% to 19%. The types of documents missing or otherwise absent from VCH request files included copies of:

- responsive records;
- results from searches conducted / evidence search was conducted;
- severing and review by program areas; and
- responses to applicants.

One in every seven applicable requests (14% or 32 of 223) did not have a response to applicants documented on file. By fiscal year, there was no documented response on 10% and 25% of requests received in 2020/21 and 2021/22 respectively. However, all requests received in 2022/23 contained a documented response in the file.

In cases where VCH did not provide a response, there was a lack of documentation confirming if the FOI request was concluded and how. In many cases, there was no documentation to indicate whether applicants abandoned their request, and if VCH had closed the file. VCH improved documentation practices in each year sampled. However, documentation was still missing in 19% of requests received in 2022/23.

Recommendation 8

VCH should fully document its processing of FOI requests, including noting in the file when it deems the applicant to have abandoned their request.

Since reviewing the findings and recommendations of this report, VCH reported that it is using enhanced file tracking with additional metrics, which includes documenting abandoned requests.

OIPC files involving VCH

Applicants can submit a complaint or request for review to the OIPC if they have concerns with how a public body handled their request for records, and could not resolve it with the public body.⁷² During the period under review, the OIPC received 33 requests for review, 30 deemed

⁷² OIPC's [Tips for Requesting Records](#), provides guidance to applicants making a request for records and what to do should they disagree with a public body or organization's response.

refusals, and 24 access-related complaints related to VCH.⁷³ Most of the complaints related to duties required by FIPPA, adequate search, and time extensions taken by VCH.

Table 7 - OIPC Reviews and Complaints 2020/21 to 2022/23		
OIPC File Type	# of Files	% of Files
Complaint	24	28%
Duty required by Act	9	38%
Adequate search	9	38%
Time extension by public body	4	17%
Fees	2	8%
Request for Review	33	38%
Deny	17	52%
Partial/severed release	16	48%
Request for review - deemed refusal	30	34%
Total	87	100%

OIPC declined to investigate or otherwise closed 13 complaint or request for review files.

OIPC investigators have the delegated authority to resolve complaint files, and few proceed to inquiry. During the timeframe under review, investigators substantiated 39% of complaints received about VCH, found that 33% of the complaints were not substantiated, and mediated the remaining 28%. None proceeded to inquiry.

OIPC investigators resolved 61% of requests for review and 82% of deemed refusals during mediation and sent 39% of requests for review and 18% of deemed refusals to inquiry. Of the 16 files sent to inquiry,

- four were withdrawn by the applicant prior to the inquiry;
- four were resolved by VCH prior to inquiry;
- two were still open at the time of reporting;
- two confirmed VCH’s decision to deny access to records; and
- four went against VCH’s decision to withhold or refuse access to records and ordered VCH to respond or disclose.

⁷³ Note: a direct comparison of requests VCH received during the sample time frame to those raised with OIPC is not possible. As such, these number reflect OIPC opened files. In some cases, the OIPC may open more than one complaint file where an applicant has a different complaint about the handling of one FOI request.

Discussion

Concerns with VCH's duty to assist

During the period audited, VCH often struggled with processing and responding to FOI requests within the spirit and the letter of FIPPA. This report has identified many circumstances where VCH failed to meet its duty to assist obligations under FIPPA. The findings show that there are multiple factors throughout the lifecycle of VCH's FOI process that collectively contributed to:

- considerable delay;
- an incorrect application of FIPPA;
- a lack of sufficient communication with applicants; and
- a lack of appropriate documentation in FOI Files.

Considerable delay

Over the period audited, VCH responded to 24% of requests within FIPPA's set benchmark of 30 business days and VCH took on average 80 business days to respond to requests. This is not an acceptable length of time to make applicants wait, without reasonable circumstances.

Further, VCH failed to respond to requests within FIPPA time limits in 72% of applicable files. In those cases where VCH did not respond to requests within FIPPA time limits, it took VCH on average an additional 74 business days to respond. This was particularly the case with media applicants, where VCH failed to respond on time to 80% of requests.

Granted, the COVID-19 pandemic impacted VCH's FOI system during much of the period of review. However, it is especially the case during times of public health crises that people require information in a timely and fulsome way.

VCH allowed 21% of requests to become stagnant, where several weeks or months went by without any apparent or documented work to continue processing the requests. These periods of inactivity contributed to VCH not only failing to meet legislative time limits, but to applicants waiting much longer than necessary to receive a response.

The findings further show that there are delays surrounding VCH searches for records. VCH took considerable time to conduct searches – an average of 17 business days for FOI staff to direct program areas to commence searching for records and an average of 19 business days for program areas to return the results of searches. This makes it apparent why VCH often did not respond to requests within FIPPA's benchmark of 30 days.

Incorrect application of FIPPA

Tied to the delay during the last nine months of the sample records was the way VCH did not always notify applicants promptly of the need to pay an application fee, and that VCH did not start counting the 30-day time limit to respond until the application fee was received. This created an incorrect calculation of the days to respond, as VCH did not include the days between receiving the request and notifying the applicant that a fee was due.

The audit also identified files where VCH did not conduct a search, or only conducted a partial search. In some cases, program areas did not attempt to conduct a search because they believed none of the records would or could be disclosed. This is problematic and not within the spirit of FIPPA to respond to requests accurately and completely.

Further, on multiple occasions VCH incorrectly applied s. 10(1)(b) when extending the time limit to respond or, in other cases, extended the time limit when the original time limit to respond already passed. FIPPA places strict parameters on when a public body can extend the time, so as to not improperly delay the right to access information. Public bodies must respect the law and only extend the time to respond when permitted and reasonable to do so.

The OIPC provides multiple resources on its [website](#) to assist and help guide public bodies apply FIPPA when responding to FOI requests. While several of these resources have been highlighted throughout this report, all public bodies are encouraged to review the OIPC website regularly for up-to-date guidance. It is important for VCH staff to understand their responsibilities under FIPPA and to be trained in records management, retention, and searches for records. FOI staff may require more in-depth knowledge of FIPPA and FOI processes, and they too must be adequately trained in their roles to respond to FOI requests.

Lacking communication with applicants

Starting with when VCH received FOI requests, VCH did not provide written acknowledgement that it received a request to 30% of applicants. VCH's written acknowledgement letter is an important tool for communication - it provided confirmation to an applicant that their FOI request was received and would be processed, and when to expect a response at the latest.⁷⁴

Applicants most often raised issues with VCH concerning updates and the status of their FOI requests. With the action VCH has already taken, together with the recommendations made in this report, VCH should be able to communicate with applicants and respond to FOI requests in a timelier manner. This should reduce the need for applicants to contact VCH requesting status updates or following up on unlawfully delayed requests.

⁷⁴ Lawful time extensions or holds pausing the time to respond aside.

Lacking documentation

Lastly, proper documentation starts upon receipt of the request and continues through to the conclusion of the matter. When documentation is missing, it can lead to challenges processing the request or verifying a public body has adequately responded. The OIPC strongly encourages VCH to ensure it fully documents each FOI request. VCH's plan to modernize its FOI document management and file tracking system can improve the way staff manage FOI request documents and responsive records.

Looking ahead

The OIPC recognizes that during the period audited VCH's FOI system experienced challenges such as the COVID-19 pandemic, which, at times, limited the capacity of certain VCH program areas and executive to attend to FOI matters. However, as shown in this report, VCH did not have sufficient practices, training, and resources in place to withstand the operational pressures in a way that accords with both FOI laws and expectations of the public. Issues such as substantial delays in responding to applicants, incorrect application of the law, and lack of appropriate communication and documentation have damaged trust in VCH's FOI system.

During times of crises, enhanced transparency becomes increasingly critical, particularly when it comes to decisions that may affect large numbers of people in British Columbia. As such, it is even more important for public bodies to have processes and systems in place to ensure resiliency in access to information systems. Building a culture that promotes transparency and accountability starts with the executive and is carried throughout a public body via attitudes, internal communications to staff, training, and procedures and practices that show respect for maintaining a robust FOI system.

VCH is taking positive steps to improve its culture and performance. Since coming out of the pandemic, reporting relationships and support from executive for the FOI Office have improved, and there is a new escalation procedure in place that allows VCH's Lead Counsel, Privacy/FOI & Chief Privacy Officer to communicate directly with management or program areas when FOI requests stall.

As well, VCH recognizes the importance of tracking FOI requests and time limits to respond. While most of this tracking and management is still done manually by FOI staff, VCH reported that it has already upgraded its FOI file tracking and is moving forward with designing a new file and document management system to assist with ensuring requests are responded to appropriately and within FIPPA time limits. While this is encouraging, this system is still approximately one year away from being operational. As such, VCH must also act in the interim to ensure it is complying with FIPPA time limits. VCH has and is hiring additional FOI staff to increase capacity to better process and respond to FOI requests. In addition, VCH has been proactive in expanding its fee payment options to include more expedient and convenient payment methods.

The OIPC would have recommended many of these steps and is encouraged by the efforts VCH is making to improve its FOI system and address issues identified during the audit. The OIPC's recommendations emphasize:

- the need for additional training on records management, FOI duties, and how to apply FIPPA;
- expanded and accessible proactive disclosure;
- better tracking and management of FOI requests; and
- further internal evaluation to correct any lags to responding to all requests within the time limits authorized by FIPPA.

Implementing these recommendations, along with the work VCH is already undertaking to strengthen its FOI program, should aid in improving VCH's compliance with FIPPA.

The OIPC encourages all public bodies, particularly other health authorities in British Columbia, to review the findings from this audit and incorporate all applicable best practices and recommendations to enhance their own FOI systems and compliance with FIPPA.

Summary of Recommendations

1. VCH must begin counting the time limit to respond on the day after an FOI request is received, and only suspend the time *after* notifying the applicant of the requirement to pay the application fee.
2. VCH should:
 - review common FOI requests and establish additional categories of records for proactive disclosure that could eliminate or reduce the need for such requests;
 - consolidate and publish all categories of records available for proactive disclosure, including links to those records to an easily accessible location on its website; and
 - inform applicants when records are available without an FOI request and direct applicants to the record without delay.
3. When requesting program areas to search for records, VCH FOI staff should specify an expected date for program areas to provide records, and follow up promptly if searches for records become overdue.
4. VCH should avoid actions, such as providing a fee estimate, that cause further delay when it is already late in responding to an FOI request.
5. VCH should implement an improved file management system to better manage and track its response to FOI requests.
6. VCH should evaluate its FOI processes to identify and correct any lags in responding to all requests within the time limits authorized by FIPPA.
7. VCH should provide mandatory routine training to all staff on:
 - records management and retention;
 - FIPPA and their responsibilities under the Act;
 - VCH's FOI policies and processes; and
 - conducting and documenting searches for records.
8. VCH should fully document its processing of FOI requests, including noting in the file when it deems the applicant to have abandoned their request.

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ORIGINAL SIGNED BY

Michael Harvey
Information and Privacy Commissioner
for British Columbia