



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

**Tips for DMIPS and Freedom of Information
and Privacy Coordinators:**

**Conducting An Adequate Search Investigation
under the
*Freedom of Information and Protection of Privacy Act***

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Purpose of This Document

This document offers suggestions for public bodies to use in investigating complaints that a search conducted in response to an access request made under the *Freedom of Information and Protection of Privacy Act* was not adequate. These suggestions are for information only and do not constitute a decision or finding by the OIPC with respect to any matter within the jurisdiction of the Information and Privacy Commissioner under the FOIPP Act. The suggestions do not affect the powers, duties or functions of the Information and Privacy Commissioner regarding any complaint, investigation or other matter under or connected with the Act, respecting which the Information and Privacy Commissioner will keep an open mind. Responsibility for compliance with the FOIPP Act remains with each public body. Those responsible for access and privacy matters within each public body must at all times apply their best judgment in discharging the powers, duties and functions of the public body under the FOIPP Act.

Step 1: Clarification with the Applicant

Review the applicant's complaint. Clarify the grounds for the complaint with the applicant if he or she has not given enough details identifying his or her reasons for believing additional records exist.

Ask the applicant:

- What records do you believe are missing?
- (If the applicant cannot identify specific records) What reason do you have for believing the search is inadequate?
- Can you identify types of records or time periods that appear to be unaccounted for, or departments or individuals you dealt with for which there are no records?
- Do you believe additional records exist because the records you have already received refer to or suggest additional records? If so, what are those records? (If necessary, review the records already sent to applicant to see if there is any evidence or suggestion of missing documents.)
- Are you aware of any particular events such as meetings or telephone calls that may have given rise to the creation of records?
- Have you received records from other sources that indicate our public body may hold other responsive records?

Step 2: Link to the Original Request

Review the original request. Did the applicant actually ask for what he or she thinks is missing or is it reasonable to assume that what he or she says is missing would have been included within what was requested?

Ask yourself or your staff:

- Could you and the applicant have different interpretations of what is responsive to the request? This may only be apparent after discussions with staff that conducted the search about their understanding of the scope of the request. If so, deal with the problem either by expanding your interpretation of the request or by having the applicant submit a new, broader request for records.
- Is the request actually for a record or is the applicant asking a question that the disclosed records do not answer? If the latter, consider answering the question or having a program area address the question, but make it clear that this is not a request under the FOIPP Act. (If the question cannot reasonably be answered, or answering the question would require a lot of research, you should explain to the applicant that the FOIPP Act only covers requests for records, not answers to questions where there are no records.)

Step 3: Determining the Adequacy of the Search

Determine what steps were taken during the initial search for records and whether, based on the applicant's complaint, further searches are warranted. Take the applicant's concerns to the individuals who conducted the search and determine and document your answers to the following questions.

Ask yourself or staff:

- Who conducted the search?
- Which files or departments were searched?
- Which ones weren't searched and why not?
- How much time was spent searching for records?
- Based on the applicant's concerns, are there any additional program areas that should be searched in order to ensure that every reasonable effort was made?

- Have staff searched electronic records, or files held apart from the main department files (such as those held by individual employees), or records stored off-site?

Conduct additional searches if it is possible that certain program areas were overlooked or that the initial search for records was incomplete, rushed or based on a narrow interpretation of the request. Staff that carry out further searches should provide written confirmation of the results, including their explanation of why there are no records if none are found.

Step 4: Confirmation with the Applicant

Speak to the applicant directly to confirm the results of your review and to advise him or her of any new information you have found. Follow up your conversation with a letter explaining what you found.

Tell the applicant:

- About the files and program areas that you searched for records and the results of those searches.
- If additional records were found, that you will provide the applicant with a copy of those records or with a response regarding those records.
- If no additional records were found, why not. For example, was it because (i) it is unlikely that such records would have been created, or (ii) that any records created were transitory in nature and would have been destroyed, or (iii) that another public body holds those records.
- Where the applicant believes a record was created or received by a specific employee and the employee denies creating or receiving such a record, that the employee denies that the record exists. *It is a good idea to have the employee confirm for you in writing that no records exist and why.*
- That may still lodge a complaint with the OIPC concerning the adequacy of the search.
