



FEES

INVESTIGATION REPORT 23-01

Access application fee six-month review

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TABLE OF CONTENTS

Commissioner’s Message.....	2
Executive Summary.....	4
1 Legislation.....	5
2 Background & Methodology	6
2.1 Methodology	6
3 Overview of Application Fee Process	7
3.1 BC Government Process	7
4 Impact on Access to BC Government Information.....	10
4.1 Requests by Applicant Type.....	11
5 Application Fees Collected by BC Government.....	13
6 Emerging Issues	14
6.1 Notice of the Application Fee	14
6.2 Time Limit to Respond.....	15
6.3 Payment Delays and Barriers.....	17
6.4 Exercise of Discretion	18
7 Conclusion	19
8 Summary of Recommendations	21

COMMISSIONER'S MESSAGE

The *Freedom of Information and Protection of Privacy Act* (FIPPA) embodies the fundamental principle—which has quasi-constitutional status—that access to government information is critically important for a healthy, well-functioning democracy. To that end, FIPPA expressly states that one of its purposes is “to make public bodies more accountable to the public...by...giving the public a right of access to records”.¹ A right of any kind is always qualified, and FIPPA has for the almost 30 years of its existence balanced access with other public interest considerations, including by permitting the imposition of fees for the processing of requests that take more than three hours.

However, late in 2021 FIPPA was amended to enable public bodies at all levels to charge an application fee any time someone seeks access to general records, regardless of how simple the request is, whether the fee will cover costs, or other considerations. There was a great deal of controversy over this amendment, and understandably so, since any fee—especially a fee that is fixed and appears to bear no relation to individual cases—risks imposing a practical barrier to the right of access to records. I expressed concerns about the application fee at the time, both to government and in public, and committed to following up on its implementation. I remain convinced today that the amendment permitting the fee should be repealed.

This report lays out my office's review of the initial impact of the fee's implementation, notably within the BC Government. The short six-month period of review and the existence of other external variables, such as COVID-19, make it challenging, at this juncture, to conclusively determine the impact of the fee on access or how it will influence long-term patterns of request volumes. Certain preliminary data suggests a negative impact on some categories of requesters while other data indicates this may not be the case for others. Though it is too early to draw conclusive judgements on the fee's impact, the statistics disclosed here clearly point to the need to carefully monitor matters going forward.

And while time will inevitably disclose any substantive impacts of the fee on applicant's access to information rights, this initial review disclosed other causes for concern with respect to its administrative implementation. For example, some public bodies imposing the fee are incorrectly calculating response times. I am also concerned that some public bodies do not accept certain payment methods, thereby denying the only means by which certain requesters can make payments. Nor is it apparent that public bodies have developed criteria to not charge or to refund the fee where fairness warrants it.

Recommendations are made below to address these and other concerns, and while I remain of the view that the fee should never be imposed, I urge the BC Government and all public bodies to implement the recommendations promptly.

¹ FIPPA, s. 2(1)(a).

I would like to express my appreciation to those individuals and organizations who shared their experiences with the application fee. These submissions provided additional context to this investigation and valuable insight from the perspective of applicants.

I would also like to express my appreciation to the Information Access Operations for their continued cooperation and assistance as well as all the public bodies that participated in this investigation including the frontline staff who deal with access to information requests every day.

Finally, I would like to thank Gary Freeburn, Compliance Auditor; Olivia Comeau, Senior Investigator; and Tanya Allen, Director of Audit and Systemic Review, for conducting this investigation and drafting this report.

ORIGINAL SIGNED BY

Michael McEvoy
Information and Privacy Commissioner for BC
January 19, 2023

EXECUTIVE SUMMARY

In November 2021, the Legislative Assembly of British Columbia amended the *Freedom of Information and Protection of Privacy Act* (FIPPA) to permit, for the first time, public bodies to charge an application fee for access to general information. In response, the Commissioner committed to this review of the implementation and administration of the fee to assess the impact on applicants and on BC's access to information system.

The BC Government was selected for the main focus of this investigation because they were the first to apply the fee. They also receive more requests than any other public body, meaning any impact from a fee might be felt here first.

The Office of the Information and Privacy Commissioner (OIPC) reviewed request data and other information with a view to assessing the application fee's effect on access to information and how the BC Government administers the fee. The OIPC also surveyed 109 other public bodies to better understand if and how they were implementing the application fee. Of the public bodies surveyed, 24 charge an application fee and another 24 were considering doing so in the future.

The OIPC reviewed the BC Government's first six months of data following the imposition of the fee and compared it to the identical six-month periods from the two previous years. All three periods overlapped the COVID-19 pandemic.

The OIPC found that the aggregate number of access requests for general records made to the BC Government declined before the fee was introduced and continued to decline in the six months following.

Much, but not all, of this latter decline in requests can be attributed to political parties. Political parties experienced an overall decline in requests over the three periods studied, including a substantial diminishment in the period prior to the implementation of the application fee. The Official Opposition attributed this prior drop to other processing fees charged by the BC Government. The OIPC observed that these other processing fees have been part of FIPPA from its very inception and can be legitimately charged by public bodies. It was therefore not clear how much of the drop in requests after the implementation of the \$10 application fee can be directly attributed to the new levy.

Requests made by the individual applicant type increased both before and after the fee was introduced. At this early stage, the application fee does not appear to be discouraging individual applicants from making general access requests; but the long-term impact is uncertain.

Media submissions argued the application fee posed a barrier to requesting records. The preliminary data collected supports these submissions. Both the total number of requests and

the number of unique media applicants seeking access to records fell following the implementation of the application fee. Though these numbers are preliminary, they give some cause for concern.

The report also considers how the fee is administered. The OIPC found that public bodies need to be transparent about whether a fee will be charged, their payment process, whether they may transfer the fee if records sought belong to another public body and the impact on the timelines for responding. Public bodies also cannot put a request on hold pending payment until they directly notify the applicant that they must pay an application fee.

Public bodies that administer an application fee should have multiple payment options, including one that permits an applicant to maintain anonymity. As it stands, some public bodies only accept payment of the application fee by cheque, which can delay payment and processing of an access request. Likewise, applicants may lose accessibility and anonymity when they have no choice but to pay by credit or debit card, or by cheque.

The report calls on those public bodies that administer an application fee to have a policy that allows for exceptions to not charge or refund the fee when warranted. This is especially important to ensure that vulnerable groups or individuals will not be disproportionately affected by the additional cost imposed on the right of access.

1 LEGISLATION

Pursuant to s. 75(1)(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), a public body may require an applicant who makes an access request under s. 5 of FIPPA to pay a prescribed application fee. Section 75(3) provides that the application fee does not apply to a request for an applicant's own personal information.² The application fee is distinct from fees that public bodies have been able to charge for processing access requests since FIPPA was enacted.³

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 – it can either charge the \$10 application fee or not charge the fee.

Significantly, individuals do not have the right to ask the Commissioner to review the decision of a public body to impose the application fee. The Commissioner has no authority to waive the application fee. This is in stark contrast to the Commissioner's authority to review, and order waiver of, processing fees imposed under s. 75. Nevertheless, pursuant to s. 42(2)(a) of FIPPA, the Commissioner may investigate any complaint regarding a duty imposed under the Act. This

² A public body does not have the authority under FIPPA to exercise discretion to charge an application fee for an access request that is for an applicant's personal information.

³ For a non-commercial applicant and as set out in s. 75(1)(b) of FIPPA and Schedule 1 of the FIPPA Regulation.

broad power provides the OIPC with the authority to investigate whether a public body failed to meet the requirements of FIPPA in the process of collecting and administering the application fee.⁴

2 BACKGROUND & METHODOLOGY

In November 2021, the Legislative Assembly of British Columbia amended FIPPA to permit, for the first time, public bodies to charge an application fee for access to general records.⁵ This new fee is in addition to the existing authority for public bodies to charge fees for processing access requests.⁶

Within days of the fee amendment coming into force, the BC Government began charging a non-refundable \$10 application fee for all access requests for general records.⁷ Some other public bodies also began to charge a \$10 application fee for requests for general records, while others have not.

In response to the imposition of this new application fee, the Information and Privacy Commissioner expressed concern that it might create a barrier for some access applicants.⁸ Therefore, the Commissioner initiated this review of the implementation and administration of the new application fee in May 2022.

2.1 Methodology

The OIPC collected and analyzed the following information:

1. The BC Government's Information Access Operations (IAO) request data from April 1, 2019 to May 30, 2022:
 - a) General file information (such as the request type, status, description);
 - b) Dates and timelines (start date, due date, closed date);

⁴ For example, the OIPC has the authority to investigate where the requirement to pay an application fee results in a public body failing to comply with its duty to assist an applicant as required by s. 6 of FIPPA or respond to an access request within the time limits set out in s. 7 of FIPPA.

⁵ *Freedom of Information and Protection of Privacy Amendment Act, 2021; Application Fee for General Requests*. Ministry of Citizens' Services. January, 2022. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/information-management-technology/information-privacy/resources/2021-amendments/foipppa_amendments_application_fee.pdf

⁶ Section 75 of FIPPA authorizes, but does not require, a public body to charge an application fee for an access request for general records made under s. 5 of FIPPA. Schedule 1 of the FIPPA regulation lists the maximum processing fees that a public body may charge for services, such as search, retrieval, and preparation of records.

⁷ All occurrences in this report of the phrase "general records" refers to an access request that is not for an applicant's own personal information.

⁸ Letter to Minister Lisa Beare. Re: *Bill 22 - Freedom of Information and Protection of Privacy Act amendments*. October 29, 2021. Michael McEvoy, Information and Privacy Commissioner for British Columbia. <https://www.oipc.bc.ca/public-comments/3592>

- c) Applicant information (applicant type, number of requests made);
 - d) Application fee (amounts charged and paid);
2. BC Government's records relating to how the application fee is administered;
 3. OIPC files pertaining to the application fee;
 4. A survey of 109 other public bodies to determine utilization of the application fee;⁹
 5. Written submissions from select organizations and individuals who regularly request access to general records, relating to their experience with the application fee.

The OIPC examined the volume of requests for general records that the BC Government received during the first six months immediately following the implementation of the application fee and compared this to the volume received during the same period in the preceding two years:

- November 30, 2019 to May 30, 2020 (**Period 1**);
- November 30, 2020 to May 30, 2021 (**Period 2**); and
- November 30, 2021 to May 30, 2022 – six-month period from when the BC Government began charging the application fee (**Period 3**).¹⁰

The OIPC chose the two most recent periods for comparison because it was necessary to compare the access requests from the first six months of the fee regime (November 30, 2021, to May 30, 2022) to other respective periods of time. While no comparator period is perfect, the same period from November 30 to May 30 of the two previous calendar years is an appropriate benchmark, given they offer a reasonably comprehensive dataset prior to implementation. Additionally, all three periods overlap the COVID-19 pandemic.

3 OVERVIEW OF APPLICATION FEE PROCESS

3.1 BC Government Process

Each BC Government ministry or agency (that is not part of any ministry) is a public body whose records may be sought through an access request. All ministries and agencies have delegated the processing and handling of access requests to a centralized unit, IAO, a division of the Ministry of Citizens' Services.

⁹ Public bodies in the broader public sector who had ten or more complaint or request for review files with the OIPC during the previous five years. This survey is not statistically representative of all public bodies that are subject to FIPPA in British Columbia.

¹⁰ The BC Government started charging a fee for requests received after 8:30am on November 29, 2022. The OIPC used November 30, 2022 as the comparison date for Period 3 as the first full day where Government charged the administrative fee for general requests.

Applicants may submit a written request for records to the IAO online, or by email, fax, or mail. Applicants identify as part of their request each ministry or agency from which they are seeking records. With respect to requests for general records, the IAO administers a separate application fee for each ministry or agency the applicant has identified.

The BC Government established an internal administrative process to not charge the application fee for requests for general records submitted by self-identified¹¹ Indigenous Governing Entities and any agent authorized by such an entity to submit an access request on its behalf.

The BC Government (generally meaning all BC Government ministries and agencies) accepts payment of the application fee by cheque or money order through mail, credit card or debit card online, or by credit card by phone. During the investigation, IAO established a process of accepting cash payments both in person and by mail on an ongoing basis.

The BC Government has established a policy not to refund the application fee. This includes circumstances where a search does not locate responsive records, or an applicant is unsatisfied with the records disclosed in response to their access request. However, they may provide a refund in certain circumstances, such as when they make an error in processing payment.

IAO notifies applicants on its webpage and the online payment portal that a non-refundable application fee of \$10 is required for all access requests for general records.¹²

IAO reviews every access request upon receipt to determine whether the request is for general or personal records.¹³ In instances where IAO determines that a request is for general records, and if the applicant has not yet paid, IAO notifies the applicant in writing that their request will not be processed unless payment is received within 20 business days. If payment is not received within this time, IAO treats the request as “abandoned” and closes the file. If the applicant later pays the fee, IAO reopens the file and continues to process it along its original timelines.

At its discretion, and regardless of application fees that may have been collected, IAO may decide to combine one or more access requests when an applicant has submitted requests with similar dates, topics and search locations. Additionally, it is not IAO’s practice to charge for splitting an access request, even if it consists of multiple requests that are sufficiently different.

¹¹ According to the BC Government, the self-identification approach “reinforces Indigenous peoples’ right to self-determination and self-Government” aligns with the Declaration Act and the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).

¹² In an instance where payment is made by cheque, processing commences once the physical cheque is received, not when the funds are cleared. <https://foirequestform.gov.bc.ca/getting-started2>.

¹³ IAO may change the categorization of a request despite what an applicant has indicated. According to information provided by the IAO, a general request is considered one that involves administrative or operational records of the BC Government in which the general theme of the records is a business or operational relationship. Comparatively, a personal request is considered one where the dominant purpose is for an applicant to obtain access to their personal information.

On occasion, the records that are the subject of a request, for which the applicant has paid \$10, may not be within the purview of the IAO and the BC government. The records may belong to another public body. The BC Government should develop a policy to address the collection of fees where they transfer requests to other public bodies outside of the provincial government. Whatever the case, the IAO should refund the money or, where the mechanisms exist, assist in the transfer of the request to the other public body, along with the fee.

RECOMMENDATION 1

The BC Government should establish a policy to address the collection of fees where they transfer requests to other public bodies outside of provincial government.

Other Public Body Processes

FIPPA applies to all public bodies in British Columbia. In addition to BC Government ministries, these other public bodies include boards and commissions, municipalities, crown corporations, school boards, universities, health authorities, and police boards.

Of the 109 other public bodies the OIPC surveyed, 24 charged an application fee for requests for general records. Of those charging the fee, eight indicated they may grant relief from payment for one or more of the following reasons:

- when an Indigenous Governing Entity submits a request;
- when a public body receives a transferred request;
- the records requested are available under the authority of other applicable legislation (possibly with different fee structures);
- the request does not result in processing fees for locating and retrieving or preparing records for disclosure; or
- the public body determines that disclosure of the requested records is in the public interest.

Table 1 shows a tally of each payment method accepted by the public bodies surveyed who charge an application fee.

TABLE 1 – METHODS OF PAYMENT ACCEPTED BY PUBLIC BODIES SURVEYED	
Method of Payment	Number of Public Bodies
Cheque	22
Credit card	13
Money order	13
Electronic transfer	7
Cash or debit card	7

An additional 24 public bodies stated they were considering whether to charge the fee in the future, depending on the volume of access requests they receive. Finally, some public bodies decided not to charge an application fee. The reasons for this decision included administrative costs, time to process an application fee, and the lack of an existing process to accept electronic payments.

4 IMPACT ON ACCESS TO BC GOVERNMENT INFORMATION

The OIPC examined the volume of requests for general records that the BC Government received during the first six months after the application fee came into effect, and compared this to the volume received during the same period in the preceding two years.

TABLE 2 – VOLUME OF REQUESTS FOR GENERAL RECORDS		
Period 1 Nov 30, 2019 - May 30, 2020	Period 2 Nov 30, 2020 - May 30, 2021	Period 3 – Fee Nov 30, 2021 - May 30, 2022
3,757 requests	2,756 requests (27% decline from Period 1)	1,744 requests (37% decline from Period 2)

On their face, these aggregate figures do not lend themselves to ready interpretation. While requests dropped in the period after the fee was introduced, it is evident that requests were already declining prior to its imposition.

These figures were then examined in greater detail to see if any further patterns could be discerned.

4.1 Requests by Applicant Type

The BC Government tracks the types of applicants who make access requests. Table 3 shows the volume of requests for general records made by each applicant type during the three periods.

TABLE 3 – VOLUME OF REQUESTS FOR GENERAL RECORDS BY APPLICANT TYPE			
Applicant Type	Period 1 Nov 30, 2019 - May 30, 2020	Period 2 Nov 30, 2020 - May 30, 2021	Period 3 – Fee Nov 30, 2021 - May 30, 2022
Political Party	2,646 requests	1,240 requests	518 requests
Individual	419 requests	510 requests	713 requests
Media	318 requests	575 requests	115 requests
Business	145 requests	128 requests	170 requests
Law Firm	111 requests	77 requests	98 requests
Interest Group	83 requests	114 requests	82 requests
Researcher	21 requests	91 requests	32 requests
Other Governments	7 requests	11 requests	2 requests
Other Public Body	7 requests	10 requests	8 requests
Indigenous Governing Entity	-	-	6 requests

Political Parties

Table 3 shows that political parties are the largest requesters of records. The Official Opposition is the most significant of these. Political parties have historically been the biggest users of access rights in BC.¹⁴ This should not be surprising. The Official Opposition, together with other parties in the Legislature, play a critical role in our democratic system in holding government to account for its actions.

Much, but not all, of the overall decline in requests over the three periods noted in Table 2 can be attributed to a decline in requests by political parties. This includes a substantial diminishment of requests between Periods 1 and 2. The Opposition explained in its submission that it made fewer requests to the BC Government even before the \$10 fee was imposed in Period 3. This related, they said, to the government's approach to the charging of fees under FIPPA for the searching, retrieval and preparing of records for disclosure.

¹⁴ *Special Report—Report card on government's access to information timeliness (April 1, 2017–March 31, 2020)*. <https://www.oipc.bc.ca/special-reports/3459>

The Opposition advised that this cost issue was compounded by the addition of the \$10 application fee, which had the immediate effect of reducing their requests in Period 3. They stated that the additional fee diminishes the ability of political parties to obtain information against which they assess and hold the BC Government accountable.

It should first be observed that fees for the search, retrieval, and preparation of records, referenced by the Opposition, have been part of FIPPA from its very inception. Those fees, in addition to others listed in Schedule 1 of FIPPA's Regulation, can be legitimately charged by public bodies for responding to access requests. If anyone, including a political party, believes Schedule 1 has been improperly applied, the appropriate course of action is to complain to the OIPC. However, and to be clear, these processing fees are separate from the application fee discussed in this report.

While the OIPC acknowledges the Official Opposition's submission concerning the effect of the \$10 application fee, it is difficult to assess, at this point, how much of the decline in requests between Periods 2 and 3 is attributable to the new application fee and how much is attributable to those permitted to be charged under Schedule 1 of FIPPA's Regulation. It will take more time and further monitoring to confirm what, if any, impact the application fee is having on political party requests.

Individuals

Individuals make up the second largest group of requesters. Citizens of all kinds seek to understand how the decisions public bodies make impact their lives. The data indicates an increasing number of people are seeking information from the BC Government. Table 3 discloses the number of requests by individuals increased from Period 1 to Period 2 and again, after the BC Government initiated the application fee. At this early stage, the application fee does not appear to be discouraging individual applicants from making general access requests; but what the longer-term holds is uncertain. Like political parties and other applicant types, it will be necessary to monitor matters as time unfolds.

Media

Like political parties, media play a vital role in a free and democratic society. Their work in holding governments to account for their actions is crucial. Their utilization of the access to information regime ranks third of all applicant types.

The media submissions received stated the \$10 application fee was affecting media access, and that media applicants made fewer requests because of it.

The preliminary data disclosed in Table 3 supports these submissions. Media requests underwent a pronounced decline after the application fee's imposition. Not only did the total number of requests decline, so did the number of unique media applicants between Periods 2 and 3. Those unique media applicants went from 63 in Period 2 to 43 in Period 3. To put it another way, the number of unique media applicants—i.e., the number of access requesters as opposed to the number of access requests—declined by over 30% after the \$10 fee was

imposed. Again, this report provides an early snapshot of matters, so it would not be prudent to draw definitive conclusions at this stage. However, these preliminary numbers are at least cause for concern.

Other Applicants

In assessing other applicant types, a mixed picture emerges. Business and law firm applicant requests increased while interest groups and researcher requests declined upon the fee's imposition.

In summary, the preliminary data discloses that the impact of the \$10 fee is mixed. In some cases, the analysis is complicated by measures taken by requesters before the fee was imposed while, in other cases, the data points to divergent conclusions. While the OIPC committed to reviewing the fee after the first six months, it will be necessary to continue to monitor the fee's impact beyond this preliminary examination.

5 APPLICATION FEES COLLECTED BY BC GOVERNMENT

In Period 3, the BC Government collected the application fee for 1,536 access requests for general records, totaling \$15,360.¹⁵ Table 4 shows the breakdown of application fees collected by applicant type.

¹⁵ In 2019, Deloitte LLP reported that, on average, it costs the BC Government \$3,000 to respond to an access request. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/initiatives-plans-strategies/open-government/open-information/foi_review_report_2019.pdf.

TABLE 4 – APPLICATION FEE COLLECTED BY APPLICANT TYPE – PERIOD 3			
Applicant Type	Number of General Requests Nov 30, 2021 - May 30, 2022	Number of Requests – Fee Collected	Total Amount of Fees Collected
Individual	713	616	\$6,160
Political Party	518	491	\$4,910
Business	170	129	\$1,290
Media	115	100	\$1,000
Law Firm	98	84	\$840
Interest Group	82	78	\$780
Researcher	32	30	\$300
Other Public Body	8	7	\$70
Indigenous Governing Entity	6	-	-
Other Governments	2	1	\$10
Total	1,744	1,536	\$15,360

IAO did not collect an application fee for every request received and closed in Period 3 for several reasons. For example, the IAO closed many requests where applicants discontinued communication about their request or withdrew their request. In other instances, IAO did not collect an additional application fee when splitting out multiple smaller requests from a larger request or transferring the request to another ministry. The OIPC agrees with IAO's practice to not charge the application fee in these circumstances.

6 ADMINISTRATIVE ISSUES

6.1 Notice of the Application Fee

Public bodies must notify applicants when a \$10 application fee applies. While FIPPA does not explicitly oblige public bodies to provide applicants with advance notice that an application fee will be charged, s. 6 requires public bodies to make every reasonable effort to assist applicants. The OIPC considers this duty to include ensuring that would-be applicants are given adequate information to enable them to make an access request. It is also important that public bodies provide applicants with information on how they can pay the fee and that any delay in payment could delay the response to their access request.

This notification should be displayed on a public body's website where processes for access to information requests are set out. This notice must also appear on the form that an applicant is expected to fill out to request records -- whether this be a paper-based or online form. In cases where an applicant submits a request by mail, email, fax or other means without payment, and the public body believes a fee applies, the applicant must be notified without delay.

Of the public bodies surveyed, some provided adequate notification and some did not. The OIPC found seven public bodies did not provide any notification to applicants on their websites or on request forms. In one example, a media applicant submitted that they only learned that an application fee was required after submitting the request and speaking with a representative of the public body. The applicant submitted that there was no notification on the public body's website that an application fee would be charged.

The BC Government gives notice of the fee through the IAO website, with the notice stating that a \$10 application fee will be charged each time an applicant requests general records from a separate ministry or agency. Notification of the payment requirement is also found in the online request form.

RECOMMENDATION 2

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

6.2 Time Limit to Respond

Section 7 of FIPPA requires a public body to respond to an access request no later than 30 business days after receipt of the request, unless there is a valid time extension or the request has been transferred to another public body.¹⁶

Section 7(4)(d) of FIPPA permits a public body to pause this time limit from when the public body determines that an application fee is required until the application fee has been paid.

This means, a public body's requirement to directly notify the applicant that they are required to pay an application fee affects how the time limit for a public body to respond is calculated. To be clear, the time limit to respond starts the day after an access request is received and is not paused until the day the public body notifies the applicant that a fee is due. A general

¹⁶ Section 7(2) of FIPPA lists the two circumstances where a public body is not required to respond to an access request no later than 30 business days after receipt of the request.

notice about the application fee on a public body's website is not a valid notice for time calculation purposes.¹⁷

Example 1

A public body receives a written access request for general records on a Monday without payment, but they do not notify the applicant of the fee until Friday. The four days, Monday to Thursday, count against the public body's time limit for responding. Based on this example, the public body would have 26 business days of its 30 days left to respond.

Example 2

A public body receives a written access request for general records on a Monday without payment. They notify the applicant about the fee on the Monday. The public body receives a cheque as payment on Friday. Those four days do not count towards the time limit to respond, as the time limit has been paused while the public body waits to receive the application fee.

The IAO submitted that when it receives a request, it typically reviews it within one business day to determine the type of record sought. If IAO concludes that it is a general record request and the \$10 fee applies but has not been paid, it notifies the applicant of this. Where this occurs, the IAO then pauses the 30-day time limit until the applicant has paid the fee.

In some cases, a number of days could pass between the receipt of the request and the date IAO notifies the applicant. Despite the IAO's notification delay, they consider that the 30-day time limit has not begun. This is not correct. It is the IAO's responsibility to notify the applicant without delay that a fee is owing. Any day of delay is counted against the 30-day time limit.

RECOMMENDATION 3

A public body must ensure the time limit to respond is not suspended when they have failed to notify the applicant of the requirement to pay the fee.

¹⁷ This is clear because, among other things, an application fee can only be imposed for requests for general records, and this means a public body must review each request to determine whether it is for personal or general records and thus whether an application fee can be imposed.

6.3 Payment Delays and Barriers

In their written submissions, a number of individuals expressed concerns about the limited payment options some public bodies make available to pay the \$10 application fee. Some noted that those who do not have bank accounts or the ability to make electronic payments face barriers to accessing records from most public bodies, because they do not permit in-person or cash payments. In fact, some public bodies only accept payment by cheque. This form of payment is subject to delays when it involves sending the cheques by mail. One example cited involved a cheque that went unnoticed by the public body for over a month, delaying the public body's processing of the request.

During the investigation, the BC Government established a process to accept cash payments on an ongoing basis. Public bodies that administer an application fee should follow suit by establishing a process that allows applicants to pay in cash.

Some applicants indicated they prefer to provide little or no personal information (i.e., to remain anonymous) when exercising their access rights. There can be valid reasons for this, including issues of personal safety or legitimate concerns about discrimination. An applicant's anonymity may be compromised if they must pay by credit or debit cards, or by cheque. In addition, public bodies that accept in-person cash transactions may require applicants to provide identification or may inadvertently collect personal information (for example, if video surveillance is in use).

The BC Government states that they do not require applicants to provide a telephone number, address, or name when making a request for general records.¹⁸ They also state that they do not link their online payment system with their applicant database. This practice and their new cash payment system as described may help to respect applicant anonymity.

Limited payment options reduce applicants' choice and ability to pay for their access requests. Public bodies that opt to charge an application fee should ensure that how they accept payment does not create unnecessary barriers or delays for applicants. There should also be options available for those applicants who wish not to disclose their identities. As such, public bodies should consider accepting various methods of payment that promote expediency, accessibility and can preserve applicant anonymity.

¹⁸ Government's *FOIPPA Policy and Procedure Manual* states that although a request under FIPPA is to be made in writing, it does not require applicants to provide a telephone number, address, or their name when making a request. However, in those cases, a public body may have difficulty processing the request and meeting the applicant's information needs. <https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/make-request>. Note: The Manual is currently being updated to reflect the 2021 FOIPPA Amendments and other developments in privacy and information management.

RECOMMENDATION 4

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.

6.4 Exercise of Discretion

While FIPPA *permits* public bodies to charge an application fee, it does not *require* them to do so. In addition to the barriers listed above, the application fee itself may disproportionately affect certain applicants more than others.

One submission stated, for example, that the fee will hinder research from different communities that addresses social issues and racism and serve as a roadblock to student researchers and journalists who do not have access to a large budget.

Not all access requests require payment of the fee. In some instances, people may pay the \$10 thinking their request is for general records, not personal records for which a fee does not apply. When such an error occurs, a public body should issue a refund.

In short, simple fairness dictates that public bodies exercise a level of discretion in deciding whether to charge the fee. All public bodies should put their minds to determining the circumstances when they will, and will not, charge the \$10 application fee.

As noted earlier, some public bodies that charge an application fee have identified circumstances in which they will exercise discretion not to. For their part, it appears the BC Government charges the application fee in virtually all cases with the exception of requests from Indigenous Governing Entities.

Public bodies should put their minds to the issue of discretion. While not intended to be an exhaustive list, consideration should be paid to either not charging or to refunding the application fee if:

- the fee disproportionately impacts vulnerable groups or individuals;
- the public body receiving the request knows early on that the request should be transferred to another public body; or
- other special circumstances dictate that fairness warrants.

Any decision to charge a fee should be done consistently and in a fair and transparent manner. All public bodies that charge an application fee should establish a policy outlining the circumstances when such a fee is charged.

RECOMMENDATION 5

Public bodies that administer an application fee should establish a policy outlining the circumstances for when they will charge or refund the fee.

7 CONCLUSION

FIPPA establishes a statutory regime for access to information that promotes government transparency and accountability, which is necessary for a healthy modern democracy. British Columbia has always enjoyed a vibrant political culture, and requests under FIPPA have played an increasingly prominent role in that culture. Growing volumes of requests have meant that public bodies have had to adapt and respond.

FIPPA has also always provided for applicants to share in the cost of accessing records where the processing takes more than three hours. These processing fees have provided incentives to applicants to come to agreement with public bodies in ways that meet the real needs of applicants without imposing an unreasonable administrative burden on public bodies.

The newly permitted levy allows public bodies to charge a fee solely because someone seeks access to general records, regardless of how simple the request is, the time it will take to process, whether the fee will cover costs, or other considerations. The fixed levy bears no relation to individual cases and risks imposing a practical barrier to the right of access to records. While the OIPC continues to urge public bodies who imposed the fee to reverse course, it is essential that those who do administer the fees do so fairly and in compliance with FIPPA. This investigation examines the early implementation of the application fee, particularly from this latter perspective.

This investigation found that public bodies across the province have not implemented the fee uniformly. The BC Government charges the application fee for all access requests for general records, with minimal exception. Other public bodies impose the fee in some circumstances but not in others. There are also public bodies that have chosen not to impose the fee at all. The fact that different public bodies have taken different approaches underscores the need for public bodies to communicate clearly whether they will charge the fee and to ensure that individual applicants are aware when and how much they must pay.

This investigation also discovered that the administration of the fee has, in some cases, created an issue of compliance with the s. 7 requirement to respond within 30 business days. Public bodies must ensure that they pause the 30-day time limit only during the time from directly notifying the applicant of the fee and receipt of the fee payment.

In addition to the fee itself posing a barrier to access, restricting methods of payment can impose additional barriers. Some public bodies only accept electronic payments. Some refuse to accept cash. However, applicants have various needs and capabilities. To administer the application fee fairly and reduce barriers to access, public bodies should offer applicants a wide variety of payment methods. In accordance with Part 3 of FIPPA, the processing of payments should also limit the collection of applicants' personal information. Some applicants have legitimate reasons for wishing to remain anonymous and should be able to pay the fee without sacrificing their anonymity.

By implementing the five recommendations provided in this report, public bodies that charge the application fee can ensure they remain in compliance with FIPPA, treat applicants fairly, and avoid imposing any additional barriers to access.

8 SUMMARY OF RECOMMENDATIONS

1. The BC Government should establish a policy to address the collection of fees where they transfer requests to other public bodies outside of provincial government.
2. Public bodies that administer an application fee for general records should clearly inform applicants without delay when a fee applies.
3. A public body must ensure the time limit to respond is not suspended when they have failed to notify the applicant of the requirement to pay the fee.
4. 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.
5. Public bodies that administer an application fee should establish a policy outlining the circumstances for when they will charge, or refund the fee.