

Requesting a Time Extension

Purpose

Section 23 of the *Access to Information and Protection of Privacy, 2015 (ATIPPA, 2015)* gives the Commissioner authority to approve an application by a public body for an extension of time for responding to an Access Request. The only extension available to a public body under the *ATIPPA, 2015* is through an application to the Commissioner under this section. These guidelines have been developed in accordance with the principle that individuals who make access to information requests are entitled to a timely response to their requests.

These guidelines set out the criteria and procedure to be used when making an application for an extension of time to the Office of the Information and Privacy Commissioner (OIPC).

Introduction

Section 16(1) of the *ATIPPA, 2015* provides that a public body shall respond to an Access Request without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended by the Commissioner under section 23. A business day is a day that is not a Saturday, Sunday or a holiday as defined in the *Interpretation Act*.

Section 23 allows a public body to apply to the Commissioner for an extension of time to respond to an Access Request not later than 15 business days after receiving the request. The Commissioner is authorized to approve a time extension application where it is considered necessary and reasonable to do so in the circumstances outlined by the public body in its application. The Commissioner has authority to extend for the number of business days that is considered appropriate in the circumstances.

Making a Request for Extension of Time

An application for an extension of time shall be made using the Time Extension Application Form. Given the strict legislated timelines for making and responding to a request for an extension of time, the form should be submitted via e-mail to commissioner@oipc.nl.ca. Public bodies may also contact the Commissioner's Office by telephone prior to sending the e-mail to discuss the matter briefly.

This guidance document will provide assistance in completing the Time Extension Application Form.



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Completing the Request for Time Extension Form

Section 2 – Summary and Background

When making an application for a time extension, public bodies must make a determination of how much additional time will be required to respond to the Access Request. The length of the extension must be stated in business days and public bodies are responsible for calculating what that the proposed new response due date will be if the application is granted as requested.

Section 3 – Related Previously Requested Extensions

Public bodies must advise the OIPC if they have made previous applications for time extensions in relation to the same Access Request. Where no previous applications have been made for the particular Access Request, public bodies can move to Section 4 of the Form. Where previous applications have been made for the particular Access Request, public bodies must, for each previous request, provide:

- the number of days previously requested;
- the number of days actually approved, if any; and,
- if the previous request was approved, the revised due date.

Section 4 – Status of Access Request

In order for the OIPC to properly assess the work which remains to be done on an Access Request, public bodies must provide information relating to the search for responsive records.

If the search for responsive records has not been commenced or is on-going, public bodies must:

- Advise of approximate number of pages of records to be searched, if known, or what records will need to be searched. This is an estimate only. Public bodies should base this estimation on the types of records to be searched (e.g. emails; research reports; memos; etc.); the timeframe of the request; and the number of areas to be searched. Where a preliminary search has been completed (e.g. keyword search of email) but those records still need to be reviewed to identify responsive records, take a sample number of records and determine the average number of pages per record and use this as a basis for calculating the number of pages remaining to be searched.
- Provide an estimate of number of pages of records already searched. This will assist the OIPC in assessing approximately the percentage of records remaining to be searched.

If the search for responsive records is complete, public bodies must:

- Advise of the number of responsive records which were located. Public bodies must be careful to provide the number of pages of responsive records and not the number of documents contained in the responsive records. For example, public bodies should state 3500 pages of responsive records were located, not that 65 reports and 100 emails were located.
- Advise whether the review of those records has started and, if so, the date on which the review started. This will assist the OIPC in assessing approximately the percentage of records remaining to be reviewed and will also provide a rough approximation of how much time is being taken to review the records based on the type of records which are responsive to the request.

Public bodies must indicate any third party notification or public body consultations which have occurred or which are on-going in relation to the Access Request.

Finally, you must inform the OIPC whether a partial response(s) has been sent to the Applicant in light of the on-going work of the public body.

When completing this Section, public bodies are required to provide a breakdown of the work remaining to be done in order to respond to the Access Request. All work should be categorized into tasks (e.g. searching for records; locating responsive records; reviewing records; notifying third parties; consultations with specified public body, etc.) and an estimate of the time, in hours, which it will take to complete each task must be provided.

Section 5 – Reasons for Request

Public bodies select the reason(s) which have resulted in the need for a time extension. If more than one reason applies, public bodies should check all applicable boxes; however, public bodies must be mindful that they will have to provide evidence to support any reasons they select. The evidence should clearly demonstrate why an extension is required and should justify the number of days sought for the extension.

It is important to provide sufficient information and evidence to support your application for extension. The more information and detail you can provide, the greater the likelihood of receiving an extension. It is insufficient for public bodies to simply reiterate the reasons they have selected.

Large Volume of Records

Public bodies should select this reason if the Access Request is for a large number of records or necessitates searching a large number of records such that it would be unreasonable to require the public body to respond within the time period set out in section 16(1).

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- What is the approximate number of pages in the responsive records? or What is the approximate number of records that need to be searched?
- In what format are the responsive records stored?
- When did the search for the records begin?
- Who was responsible for conducting the search?
- What was the approximate time taken to search for the records?
- When were all responsive records provided to the ATIPP Coordinator?
- What is the current status of the Access Request?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Meeting Deadline Would Unreasonably Interfere with Operations of Public Body

Public bodies should select this reason if the nature of the Access Request is such that responding within the time period set out in section 16 would interfere unreasonably with the operations of the public body.

The phrase: “unreasonably interfere with the operations of the public body” can be broader in scope than just an interference with the operations of the public body’s ATIPP Coordinator. Depending on

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the nature of the request and volume of records that must be searched and retrieved, the operations of other business areas of the public body may also be affected if staff from these areas are involved in processing the request. The resources available to the public body in terms of its size and number of employees are important contextual factors.

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- How would meeting the time limit set out in section 16(1) unreasonably interfere with the operations of the public body?
- How many active requests is the public body currently processing?
- What other access and privacy activities is the public body currently managing and have these activities been influenced by the time taken to respond to this Access Request?
- How has this Access Request affected the public body's staffing resources and the current workloads of staff?
- Were staff members required to work overtime to process the Access Request?
- Were staff members reallocated from other activities to respond to the Access Request?
- Were staff members from other business areas required to assist in responding to the Access Request?
- Has responding to the Access Request affected the public body's ability to respond in a timely manner to other Access Requests or other access and privacy related activities?
- Does the public body have an alternate/back-up ATIPP coordinator who is able to assist in processing this Access Request?
- Does the size of the public body (total number of employees) impact your ability to respond to this request?
- Has the applicant submitted multiple concurrent requests to the public body or have two or more applicants who work in association with each other submitted multiple concurrent requests? If the answer to this question is yes, please also provide the following information:
 - What is the number of multiple concurrent requests submitted by the applicant?
 - What are the dates on which the public body received each of the applicant's requests?
 - On what dates did the public body receive the requests from the persons with whom the applicant is working in association?
 - What is the evidence that the applicant is working in association with others who have submitted Access Requests?
 - What is the wording of the multiple concurrent requests in question?
 - What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Note: The Commissioner may need to confirm the identity of the requester(s) in order to assess this particular category of time extension.

Worked with the Applicant to Clarify the Request/Insufficient Detail

Public bodies should select this reason if the applicant has not provided sufficient details about the information requested to allow an employee familiar with the public body's records to identify and locate the records containing the information with reasonable efforts, and therefore (a) consultation

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with the applicant for the purpose of clarifying the details of the request was required, and (b) the necessary consultation with the applicant has delayed the process to such an extent that the public body's response could not reasonably be completed within the time period set out in section 16(1).

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- What difficulty was encountered with the wording of the original request received by the public body?
- What was unclear about the wording of the request?
- What attempts were made by the public body to clarify the request with the applicant (include information on the number of attempts, the dates of the attempts and copies of any communications with the applicant, with personal information redacted)?
- What was the date on which the request was clarified such that responsive records could be identified?
- What was the wording of the clarified request?
- Why did this consultation create an unusual delay in responding to the request (e.g. was the applicant uncooperative or did the applicant not reply in a timely manner to a request for the needed clarification)?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Third Party Notification

Public bodies should select this reason if the public body has given notice or is considering giving notice to a third party under section 19 of the *ATIPPA, 2015* and the notification and the third party response to the notification could not reasonably be completed within the time period set out in section 16(1). An extension will not automatically be granted where the public body has sent a third party notification, it will depend on the circumstances involved.

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- How many third parties have been notified under section 19?
- Which third parties have been notified under section 39 and which under section 40 (please provide copies of the notification letters with any personal information redacted)?
- What are the dates on which the third parties were notified?
- What is the volume of records sent to the third parties pursuant to section 19(3)?
- What efforts were made to notify the third parties at an earlier date?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Consultations with Another Public Body or Executive

Public bodies should select this reason if the ATIPP Coordinator finds it necessary to conduct consultations in relation to the Access Request and such consultations could not reasonably be conducted during the time period set out in section 16(1) or have resulted in unavoidable delay in processing the access to information request.

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When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- What consultations were reasonably necessary in relation to the Access Request?
- Why were the consultations necessary?
- What are the dates of the consultations or intended consultations?
- How long were the consultations or, if the consultations are still on-going, how long are they likely to take?
- Why were the consultations not held at an earlier date?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Difficulty Gathering Records

Public bodies should select this reason if the public body has experienced or anticipates experiencing difficulty in gathering the records to such an extent that the public body's response could not reasonably be completed within the time period set out in section 16(1). The difficulty may be due to the location or nature of the records.

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- What difficulty was encountered with gathering the records?
- Where are the records located?
- What format are the records in?
- What attempts have been made to gather the records (include information on the number of attempts, the dates of the attempts and copies of any communications with the applicant, with personal information redacted)?
- Why does gathering the records create an unusual delay in responding to the request (e.g. are the records in a location inaccessible to the public body? Are the records in a format not readable by the public body)?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Unforeseen Circumstances

Public bodies should select this reason if circumstances have arose which were not foreseeable when the public body began work on the Access Request which have had an impact on the public body's ability to respond within the time period set out in section 16(1).

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- What are the circumstances that have arisen which are impacting the response to the Access Request?
- Why were these circumstances not foreseeable when the Access Request was received?
- How have the circumstances impacted responding to the Access Request? Public bodies must explain the connection between the circumstances and the processing of the access request.

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- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Sensitivity/Complexity of Material

Public bodies should select this reason if the subject matter of the Access Request is particularly sensitive or complex and, as a result, responding to the Access Request requires expert, legal or executive consultation impacting the public body's ability to respond within the time period set out in section 16(1). A complexly worded Access Request is not necessarily indicative of a complex subject matter. Public bodies will have to demonstrate that the subject or focus of the records is a sensitive or complex matter.

When requesting an extension on this basis, public bodies must provide the following information to the Commissioner, if applicable:

- Why is the subject matter of the Access Request considered sensitive or particularly complex?
- Who needs to be consulted in order to appropriately respond to the Access Request (e.g. subject matter experts, solicitors or executive)?
- What are the dates of the consultations or intended consultations?
- How long were the consultations or, if the consultations are still ongoing, how long are they likely to take?
- Why were the consultations not held at an earlier date?
- Are the records accessible only to a limited number of individuals due to the sensitive nature of the records?
- What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?

Other Reasons

The Commissioner may grant an extension of time where it would be necessary and reasonable to do so. If a public body feels it has a reasonable basis for needing a time extension other than those listed on the Form, it should provide detailed information relating to those reasons and evidence supporting those claims must be provided to the OIPC.

Section 6 – Other Information

If there is additional information related to the Access Request which you feel would support your application for a time extension, you must provide it in this Section. Any claims made in this Section must be supported by convincing evidence and should assist in justifying the extension you are seeking.

Response by the Commissioner

The Commissioner is required to respond to an application for an extension of time without delay but not later than three (3) business days after receiving the application.

Please note that the time to make an application and receive a decision from the Commissioner does not suspend the period of time for responding to an Access Request as set out in section 16(1)

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of the *ATIPPA, 2015*. The Coordinator should therefore continue to process the request after submitting an application for a time extension.

Where the Commissioner does not approve the application, the public body is required to respond to the request without delay and in any event not later than 20 business days after receiving the request.

Notification to the Applicant where Application Approved

Where the Commissioner approves the application and the time limit for responding has been extended, the public body is required to notify the applicant without delay of the following:

- the reason for the extension;
- that the Commissioner has authorized the extension, and
- when the applicant can expect the response of the public body to the Access Request.

The public body should provide the Commissioner with a copy of the notification letter sent to the applicant, with any personal information redacted.