

## FIPPA Requests : A How-To Workshop

First I will give a bit of information on the access to information statute. Then I will go through the process of creating a request and give some tips for getting the information you need quickly and not expensively. I'll talk about what happens after the organization gets your request and what they do with it. And if you are not satisfied with the organization's decision you can appeal to the Information Commissioner of Ontario. Finally we'll do a short exercise in making a request for access to information. Throughout the workshop I will also mention my own experiences with requesting information under FIPPA.

Government transparency is a hallmark of democracy. According to the IPC, Canadians have the right to "request access to recorded information held by government organizations". This right is enshrined in legislation. There are various statutes regulating the process, depending on the jurisdiction:

- federal government (this is not limited to ministries but also includes organizations such as Canada Post and the Bank of Canada)
- provincial or territorial government (including organizations such as universities and hospitals)
- municipal government (including school boards and public libraries)

The statute applicable to Ontario government information is the *Freedom of Information and Protection of Privacy Act*, also known as FIPPA. FIPPA provides access to public government information and it also allows individuals to access and correct their own personal information held by government organizations. In this workshop I will only be addressing access to public information. Note that I said *public* information. This means that you cannot use the process to ask for things such as the personal information of an organization's employees, or a student's grades.

Ontario's Information and Privacy Commissioner is responsible for upholding the legislation. It's significant to note that this office operates independent of government, and the Commissioner is not considered a public servant.

Let's say you want to get some information from a government institution. The access procedure is described in FIPPA starting at s. 24. Government organizations will have an internal information and privacy office, or at least a person responsible for these requests (known as the "head"). Contact information for the FIPPA coordinator of each institution can be found at the web site on the screen. You can also generally find an organization's privacy and information office's web site by putting its name and "FIPPA" into a search engine.

But before you make a formal request for information, know that informal requests are always an option. They don't cost anything, first of all, and can be much quicker than a formal request. If you think that an informal request would be fruitful, by all means it should be your first course of action. At the very least it can help you to understand where the information resides, should you choose to make a formal request. When I was looking for information from Western about the events leading up to the signing of the Access Copyright licence, I spoke first with the university's legal counsel on an informal basis, in order to better formulate my formal request.

An organization will usually have its own formal request form that can be found on its web site. Or you can use the generic request form at IPC web site, or just write a letter. The request must be mailed, not faxed or e-mailed, along with a \$5.00 fee, to the address of the organization's FIPPA office (not to the IPC).

I have included in your handouts a copy of Western's request form. You can see that there's a big space in the middle for a detailed description of the records you are requesting. The more detailed you can make it the better. It's easier for everyone concerned.

Here are some tips for requesting the information. First, do some preliminary research. Talk to someone knowledgeable about the information you are seeking. Make an informal request for information; it doesn't bar you from making a formal request later on, and as I mentioned, it can help you narrow down what you want.

This brings us to the next tip: be clear and specific in your description. It's somewhat like formulating a search strategy for a database — you want to obtain everything that's relevant but

avoid false positives. There is no word limit for your description. In fact, you can even add extra pages if you need to. Giving the FIPPA office more details will cut down on search time, you are more likely to receive only relevant information, and it will reduce processing fees. Along the same lines, include date ranges if you know them, and names of responsible persons, and refer to specific documents that you are aware of.

It's also a good idea to exclude information that is explicitly unnecessary or unlikely to be supplied (for example, solicitor-client communications). In other words, don't just tell them what you want; tell them what you don't want, so they won't bother searching for it.

What happens after you mail out the request and fee? The organization will send you a letter of acknowledgment, letting you know that they have received it. If they find that it's not clear or detailed enough for them to know what you're looking for, they are required by section 24(2) of FIPPA to help you reformulate the request. They have 30 days from date of receipt (or from the date that you've clarified the request) to make a final decision about granting access. However, they can give themselves a time extension. Western gave themselves an extra 60 days on my request, for a total of 120 days before they had to give me a final decision. If they do that, they have to give you notice along with the reasons for the extension, and you can contest it.

Meanwhile, they may send you an "interim notice" — a letter with the details of the search, including processing fees. They are permitted to charge you for fulfilling your request, i.e., for searching, preparing, and copying the records. There is a set schedule of fees that can be found in FIPPA's regulations. For example, manual search and preparation of records is \$7.50 for 15 min (or \$30 per hour). Photocopies are 20¢ per page, if you want copies to keep. This letter must specify how long it is expected to take to search for and prepare the records, and what the final cost is estimated to be.

If the cost is \$100 or more, they will require a deposit of half before they will continue with the process. Western's estimate was \$489. You can ask them for a fee waiver, and they have discretion to waive or lower the processing fee. I did ask for a waiver, but did not receive one.

On the other hand, an access request I made to the University of Toronto proceeded without any fee other than the initial \$5.00, since the request was fairly simple.

The interim notice must also indicate whether third parties must be contacted because information related to the third party is implicated. The third party may contest the release of this information. For example, my request to Western implicated the interests of Access Copyright, so they were contacted.

Eventually, the final decision notice will indicate if they're going to give you access to any information, and what they're not going to give you access to. There are a number of discretionary exemptions in FIPPA, where the organization does not have to give you the documents if they feel it will compromise themselves or the province in some way. These exemptions are found in sections 12-22 of FIPPA, and include the aforementioned solicitor-client privilege, information that could be prejudicial to the organization (or third party's) financial interests, or policy advice or recommendations to the organization.

But there are also exceptions to these exemptions, for things such as the results of statistical survey, a committee report, or information where the compelling public interest of disclosure outweighs purpose of the exemption (s. 23).

If you are not satisfied with the outcome, an organization's decision can be appealed to the IPC. This must be done within 30 days of notice of decision (not 30 days after you receive any requested information). You can also appeal the processing fee if you do it within 30 days of the fee estimate.

The form for appeals is located on IPC web site. On the third page of the form you can include a brief explanation for the basis of your appeal. This does not need to be a legal argument and you don't need to consult a lawyer. You are basically asking them to take a look at the final decision.

You mail the form, a \$25 appeal fee, copy of your FIPPA request, and copy of the organization's final decision to IPC.

There are different types of appeals but I'll be talking about regular appeals. Note that not all appeals are accepted for consideration; some may be screened out as being frivolous or out of IPC's jurisdiction.

The majority of accepted appeals will go to mediation, where the mediator will try to facilitate a compromise or resolution between the two parties. The organization must supply the contested documents to the mediator. The parties may be asked to meet in person or by phone conference. I have appealed Western's decision to withhold certain documents, and I have been contacted by the mediator, but I haven't yet been invited to a meeting. You don't have to go to a meeting with the other party, but it's probably a good idea if you do, since you will be able to discuss things with the other party and perhaps come to a mutually satisfactory agreement.

If the parties are unable or unwilling to resolve things through mediation, the file goes to adjudication, which is more like your traditional court case (although it's not actually in the court). Here you *will* have to make representations, which are arguments supporting your position, with reference to past decisions of the Commissioner. For example you might argue that one of the discretionary exemptions does not apply with respect to a particular document. Now keep in mind that the government organization probably has its own legal team ready to jump into action. So at this point you might want to ask for some help from someone who is more well-versed in the law.

The adjudicator will look at the evidence and the representations, and hand down an order. This order is binding on all parties, and any further appeals will go to the courts for judicial review.

Lisa Di Valentino  
The University of Western Ontario  
June 27, 2013

