

# 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. In keeping with that principle, this Office takes the position that only those officials who are consulted by the ATIPP Coordinator for advice necessary to process the request or who are consulted for the purpose of assisting the Coordinator in obtaining or locating the requested information should be involved in handling the access to information request. Therefore, this Office is of the view that any other consultations will not be considered as a reasonable and necessary use of the ATIPP Coordinator's time and time extensions will not be granted to allow for other types of consultations other than those noted below.

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).



## Contact Information

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## 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).

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.

### Circumstances to be Considered by the Commissioner

The Commissioner will consider approving an application for an extension in circumstances under the following circumstances.

1. The applicant has not provided sufficient details about the information requested to allow an employee familiar with the records of the public body to identify and locate the records containing the information with reasonable efforts, and therefore (a) consultation with the applicant for the purpose of clarifying the details of the request is 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). This circumstance will be given greater consideration by the Commissioner where the need for consultation has created an unusual delay or the applicant has not been cooperative or has not replied in a timely manner to a request for the needed clarification.

When requesting an extension, the following information should be provided to the Commissioner.

- 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?
  - What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?
2. The access to information 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, the following information should be provided to the Commissioner.

- What is the approximate number of pages in the responsive records?
- What is the approximate number of records that need to be searched?
- In what format are the responsive records stored?
- When was the search for the records begun?
- 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?

3. 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.

**Note:** The phrase: “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 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, the following information should be provided to the Commissioner.

- 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?
  - What other information would be helpful to the Commissioner in making the decision whether or not to grant the extension?
4. The access to information applicant has submitted multiple concurrent requests to the public body or two or more applicants who work in association with each other have submitted multiple concurrent requests 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, the following information should be provided to the Commissioner.

- 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?

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- 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.

5. The public body has given 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) (Note: 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, the following information should be provided to the Commissioner.

- 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 are the contents of any 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?

6. 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.

When requesting an extension, the following information should be provided to the Commissioner.

- 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 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?

7. The circumstances are such that the Commissioner considers it fair and reasonable to grant an extension of time.

When requesting an extension, the following information should be provided to the Commissioner.

- What are the circumstances involved in the processing of the access request that make it fair and reasonable to grant the requested extension of time?

### Making a Request for Extension of Time

An application for an extension of time shall be made in writing to the Office of the Information and Privacy Commissioner. Given the strict legislated time lines for making and responding to a request for an extension of time, the preferred method for making a request is by e-mail to [commissioner@oipc.nl.ca](mailto:commissioner@oipc.nl.ca) (It would be preferred if the public body would contact the Commissioner's Office by telephone prior to sending the e-mail to discuss the matter briefly).

### General Information to be Provided to the Commissioner

The following general information will be required by the Commissioner in deciding whether or not to grant a time extension.

- Name of the public body requesting the extension.
- Name and contact information of the ATIPP Coordinator.
- Public body file number.
- Wording of the access request.
- Date the access request was received by the public body.
- Original due date of request.
- Copy of the advisory response letter sent to the applicant in accordance with section 15 of the *ATIPPA, 2015*, if this letter has been sent (with any personal information redacted).
- Information regarding any estimate of cost sent to an applicant in accordance with section 26 of the *ATIPPA, 2015*, including a copy of the estimate, date the estimate was sent to the applicant, date of any reply from the applicant regarding the estimate and copies of any correspondence with the applicant regarding the estimate (all with any personal information redacted).
- What work has been done to date to process the access request?
- What work remains to be done to complete the processing of the access request?
- Can the public body release information in batches as records are processed?
- Length of time extension being requested.

### Response by the Commissioner to an Application for an Extension of Time

The Commissioner is required to respond to an application for an extension of time without delay but not later than 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) of the *ATIPPA, 2015*.

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 of the Applicant where Application Approved by Commissioner**

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:

1. the reason for the extension;
  2. that the Commissioner has authorized the extension, and
  3. 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.

