

Duty to Assist and Meaningful Responses

Sections 9 and 14 of the *Right to Information and Protection of Privacy Act*

The purpose of this guidance document is to ensure public bodies are aware of their obligations to applicants under the duty to assist provision found in s. 9 of the *Act*, as well as their obligations under s. 14 on what is included in a meaningful response to their access request.

Duty to assist: Section 9

The duty to assist provision compels all public bodies to be helpful and assist applicants throughout the processing of an access request:

9 The head of a public body shall make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner.

The duty to assist includes having discussions with applicants to ensure that the public body understands what information he or she is looking for, that a reasonable search for the relevant records is conducted, and that the public body provides a meaningful response to the access request.

Ensure that you understand what the applicant is seeking

The first step that should be taken when a public body receives an access request is to ensure that there is mutual agreement between the applicant and the public body on what information is specifically being sought. Applicants have a duty under s. 8 of the *Act* to be as specific as possible in making access requests; however, we encourage public bodies to contact applicants as a matter of practice to discuss their access requests at the outset, even in cases where it appears to the public body that the request is clear. Public bodies must always keep in mind that its use of certain terms and phrases may not be the same as how they are used by the general public and that applicants may not always know the best way to word requests to get at the information they are seeking.

If the applicant decides to amend the wording after submitting an access request, this should be confirmed in writing with the applicant.

If a public body receives an access request that is vague or unclear to the point that it is not possible to determine what records the applicant is seeking or how to start processing the request, the public body has the option under s. 12 of the *Act* to ask the applicant in writing for clarification. In doing so, it is helpful for the public body to explain why the request is unclear and what further details it needs to begin processing the request. If the applicant does not respond to a written request for clarification within 20 business days after receipt, the public body can deem the request as abandoned by notifying the applicant accordingly and informing of the right to file a complaint with our Office.

Reasonable search

Public bodies are required to ensure that they take appropriate steps to conduct a reasonable search for records that are relevant to access requests and should always document its search process. For further guidance on the search process, please refer to our Reasonable Search Best Practice.

Meaningful responses: Section 14

Part of the obligation to be open and accurate in treating access requests is ensuring that applicants receive meaningful responses, particularly where access to some or all of the requested information is being refused, or where the public body failed to find any relevant information in its records. It is not helpful for applicants, nor in keeping with the requirements of s. 14 of the *Act*, for public bodies to merely recite the specific provision(s) of the *Act* that the public body is relying on to refuse access.

The contents of response requirements are found in s. 14 and include the following:

14(1) In a response under subsection 11(1), the head of a public body shall inform the applicant

- (a) as to whether access to the record or part of the record is granted or refused,
- (b) if access to the record or part of the record is granted, of the manner in which access will be given,
- (c) if access to the record or part of the record is refused,
 - (i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located;
 - (ii) in case of a record that exists and can be located, of the reasons for the refusal and the specific provision of this Act on which the refusal is based...

In the event that a public body conducts a reasonable search but does not find any relevant records in its custody or under its control, the response must inform the applicant accordingly, as required by s. 14(1)(c)(i). The response should also provide a brief explanation as to why the public body is satisfied that it has no such information in its records (for example, the public body and/or its employees were not involved in the subject matter of the request, records previously existed but were disposed of in keeping with established retention schedules).

Where a public body has relevant records but is refusing access (either in whole or in part), the response should provide a brief description of the record(s) in question (without disclosing any protected information), the exception that the public body is relying on to refuse access (including the specific element of the exception that applies), and a brief explanation as to why or how the exception applies to the withheld information.

As an example, s. 26(1)(a) is a discretionary exception to disclosure that allows a public body to refuse to disclose information that could reasonably be expected to reveal advice, opinions, proposals or recommendations developed by or for the public body or a Minister of the Crown.

In refusing access on this basis, the public body's response should indicate:

- a brief description of the record in question (for example: a briefing note prepared for the Minister on Project X);
- an explanation of the nature of the information that is being withheld (for example, the portion of the briefing note that contains a recommended course of action for the Minister's consideration);

- the specific elements of s. 26(1)(a) that apply to the withheld information (for example, advice and recommendations); and
- as this is a discretionary exception, and as the public body has the choice to either grant or refuse access, the reasons why the public body is opting to refuse (for example, the Minister has not yet made a final decision on the recommended course of action in this case and is not prepared to make this information publicly available at this time).

In the case of mandatory exceptions to disclosure (as found in ss. 17 to 22.1 of the *Act*), public bodies are not permitted to disclose information that fall within these provisions. Responses should reflect this by indicating the nature of the information that is being refused, the wording of the specific exception that applies to the information in question, and the reasons why the mandatory exception does not permit disclosure of the withheld information.

For example, where a public body is refusing access to personal information about someone other than the applicant on the basis that disclosure would be an unreasonable invasion of that person's privacy, it is not sufficient for the response to simply reference the s. 21(1) exception without further explanation. While the public body must be careful with the level of detail it provides to substantiate its reliance on this exception, a brief description of the nature of the personal information in question is helpful for the applicant to understand why it must be protected (i.e., home address or contact information, details about employment history or financial circumstances, and so on).

Providing meaningful explanations to applicants is a key component of the duty to assist and will better help applicants understand why they are not receiving some or all of the requested information. If applicants know the reasons why information is not being provided by the public body, they may nevertheless be satisfied with the public body's response, even if they are unhappy with not receiving the requested information.

Where applicants do not understand a public body's reasons for refusing access or the response as a whole, they are more likely to complain to this Office to ask us to investigate whether their access rights have been respected, or in the alternative, to refer the matter to the Court of Queen's Bench.

If an applicant exercises the right to complain after having received a meaningful response, he or she can more easily focus on the issue(s) to be addressed in our investigation, and our work is greatly facilitated when we can immediately understand the public body's concerns with disclosure. For this reason, meaningful responses can lead to a quicker informal resolution of issues raised in complaints and more focused investigations by this Office.

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