



<b>Procedure:</b>	7.6.2
<b>Approved By:</b>	Trust Council
<b>Approval Date:</b>	September 9, 1994
<b>Amendment Date(s):</b>	December 9, 1995; September 23, 2021
<b>Policy Holder:</b>	Legislative Services Manager

## FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY PROCEDURE

### Purpose

To outline the required steps to process a formal request to access records in compliance with the *Freedom of Information and Protection of Privacy Act (the "Act")*.

### A. Definitions

"Day" does not include a Saturday, a Sunday or a holiday

### B. Procedure

1. Before a formal request is logged, the initial contact with an applicant is made by frontline staff. In consultation with the Deputy Secretary, frontline staff determines if the request is for routinely available records, or is a formal Freedom of Information (FOI) request. If a formal FOI request, the request must be received in writing (either on an official request form or by written letter or email) and submitted to the Deputy Secretary. If a trustee receives a formal FOI request, it must be forwarded to the Deputy Secretary.

### 30 WORKING DAY CLOCK STARTS ( )

#### 2. BY DAY 3

- 2.1 The Deputy Secretary reviews the request to confirm that it is a formal access request. The request should be further defined or clarified at this time, if necessary, and any changes to the scope of the request must be documented. Request is logged, file is established, and a decision is made to determine if the request should be transferred to another public body.
- 2.2 Deputy Secretary forwards an acknowledgement letter to the applicant (if transferring request, notify applicant of transfer), and the request is assigned to appropriate staff.

#### 3. DAY 4 - 8

- 3.1 Deputy Secretary retrieves and copies records requested where possible. If more clarification is required, call applicant. Liaison with staff or trustees may be required at this point to request copies of the responsive records or to determine the location of files/documents being requested.

#### 4. DAY 9

- 4.1 Deputy Secretary conducts a preliminary assessment of the records and:
  - 4.1.1 Considers fee estimate. If fee deposit is applicable, Deputy Secretary sends notice to applicant, and suspends processing until deposit is received.
  - 4.1.2 Considers transferring request to another public body. Within 20 working days after a request for records is received the final decision on whether to transfer request to another public body must be made. Deputy Secretary sends notice of transferring an access request at this time, if required.
  - 4.1.3 Considers if third party notice is required. Deputy Secretary sends notice to third parties if required in accordance with Section 23(3) of the Act. The third party has 20 working days to respond.
- 4.2 If third party notice is required, the time limit under Section 24 of the Act is in effect. If applicable, third party records must be provided to the applicant within 30 working days from the date of third party notice.
- 4.3 If a fee deposit is required, the response time clock stops until the fee deposit is received.

**5. DAY 13**

- 5.1 By end of 13th working day, the preliminary assessment should be complete, and any decisions on fees, consultations, and time extensions should be made.

**6. DAY 14 - 18**

- 6.1 Deputy Secretary performs a detailed line-by-line review of records and applies any exceptions in the Act. In considering records, the Deputy Secretary must decide if, at this time, there should be any further consultations with third parties or if additional internal and external public bodies should be consulted.

**7. DAY 19 - 29**

- 7.1 Day 29 is the deadline for responses from third parties. Complete review of third party representations by the end of day 29.
- 7.2 Deputy Secretary performs a final analysis of records being provided to applicant. In the case of complex requests, the Deputy Secretary should confer with the Head in making the final decision on the response.
- 7.3 At this time, exceptions in records are severed by the Head, if necessary.

**8. DAY 29 - 30**

- 8.1 Deputy Secretary sends response letter to applicant and encloses records. Applicant should be informed of any severing decisions which were made.

- 8.2 Day 27 is the last day on which a request for permission for an additional time extension can be sent to the Commissioner.
- 8.3 At this time, collect fee balance owing (if applicable) - suspend processing until fee balance is received (response time clock stops until fee balance received).

## **9. REVIEW OF HEAD'S DECISION BY COMMISSIONER**

- 9.1 A request for a review of a decision of the Head by the Commissioner must be delivered to the Commissioner by the applicant within 30 days after the person asking for the review is notified of the decision of the Head. Once the Commissioner's Office receives a request for review, the Commissioner must give a copy to the Head of the Islands Trust and to any other person that the Commissioner considers appropriate.
- 9.2 If an appeal has not been requested by the applicant after 30 days of the Head's decision regarding an applicant's access request, the file is closed.
- 9.3 If the applicant requests an appeal or submits a complaint to the Commissioner within the 30 day notification period, the following takes place:
  - 9.3.1 A Portfolio Officer in the Commissioner's Office will contact the Deputy Secretary, and ask for a summary of the Islands Trust's decision relating to the request. The Deputy Secretary will contact the necessary staff and/or trustees to obtain relevant input and provide a comprehensive summary to the Portfolio Officer.
  - 9.3.2 Background information from trustees, staff or legal counsel may be provided to the Portfolio Officer along with the summary.
  - 9.3.3 If the appeal or complaint is settled through mediation with the Portfolio Officer, the Deputy Secretary closes the file, and informs the necessary staff and/or trustees.
  - 9.3.4 If the appeal or complaint is not settled through mediation, the Commissioner must conduct an inquiry. The Commissioner has broad discretion to determine how the inquiry will be conducted. The following applies:
    - 9.3.4.1 On receiving a request for a review, the Commissioner must give a copy of the request to the Islands Trust and any other person that the Commissioner considers appropriate.
    - 9.3.4.2 The Commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.
    - 9.3.4.3 The inquiry may be conducted in private.
    - 9.3.4.4 The person who asked for the review, the FOI Head of the Islands Trust, and any person given a copy of the request for review, must be given an opportunity to make representations of the Commissioner

during the inquiry. Assistance from Islands Trust legal counsel may be sought to prepare Islands Trust's formal response to the inquiry.

9.3.4.5 The Commissioner may decide

9.3.4.5.1 whether representations are to be made orally or in writing, and

9.3.4.5.2 whether a person is entitled to be present during, or to have access to, or to comment on, representations made to the Commissioner by another person.

9.3.4.6 The person who asked for the review, the Head of the Islands Trust, and any person given a copy of the request for review, may be represented at the inquiry by legal counsel or an agent.

9.3.4.7 An inquiry into a matter under review must be completed within 90 days after receiving the request for the review. The Head must comply with the Commissioner's orders within 30 days, unless an application for judicial review of the order is brought before that period ends.

**C. Legislated References**

1. [\*Freedom of Information and Protection of Privacy Act\*](#)
2. Freedom of Information and Protection of Privacy Bylaws and Resolutions
3. Policy Manual: [Freedom of Information and Protection of Privacy Policy \(7.6.1\)](#)
4. [Ministry of Citizen Services Freedom of Information and Protection of Privacy Policy and Procedure Manual](#)

**D. Attachments/Links to Supporting Forms, Documents, Websites, Related Policies and Procedures**

n/a