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IPC Practices

PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO
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Responding to Requests for Personal Information

This issue of IPC Practices outlines the IPC's recommended approach for institutions responding to requests for personal information.

Under the *Freedom of Information and Protection of Privacy Act* (the provincial Act) and the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal Act), institutions may receive requests for one of the following types of information:

- (a) personal information of the requester only;
- (b) personal information of an individual other than the requester;
- (c) personal information of the requester **and** personal information of an individual other than the requester.

Which part of the Act applies?

On occasion, institutions responding to requests for personal information are uncertain whether to analyze the request under Part II or Part III of the provincial Act (Part I or II of the municipal Act). This is especially true where the request involves both the personal information of the requester and the personal information of an individual other than the requester.

The following approach should help institutions determine which Part of the provincial or municipal Act is appropriate:

Records that contain any of the requester's personal information

Evaluate the request under Part III of the provincial Act (Part II of the municipal Act). The sections found in these parts of the Acts provide guidance to institutions regarding disclosure of personal information.

Generally, an individual seeking access to a record that contains his or her personal information has a greater right of access than if the record does not contain any such information. Part III of the provincial Act and Part II of the municipal Act oblige institutions to **consider** whether records should be released to an individual, regardless of the fact that they may otherwise qualify for exemption under the legislation. In these situations, the institution has the discretion to choose whether to release the records after considering any applicable exemptions and weighing the requester's right of access against any other individual's right to the protection of his or her privacy.

For guidance on the steps to follow when exercising discretion, please refer to the paper entitled *Exercising Discretion under section 38(b) of the Municipal Freedom of Information and Protection of Privacy Act: A Best Practice for Police Services*.

For guidance on how to prepare a decision letter denying access to a requested record, please refer to *IPC Practices Number 1: Drafting a Letter Refusing Access to a Record*.

Records that contain personal information of an individual other than the requester

Evaluate the request under Part II of the provincial Act (Part I of the municipal Act).

Where the record contains only the personal information of an individual other than the requester, the institution must refuse to disclose this information, except where its disclosure would **not** constitute an unjustified invasion of the individual's personal privacy, or where another exception in section 21(1) of the provincial Act [section 14(1) of the municipal Act] applies.

Appeals

Where a decision is appealed and an institution has failed to evaluate some or all of the records under the correct Part of the Acts, the IPC may request that the institution prepare an additional decision letter that applies the correct Part.

Should the case proceed to the inquiry stage of the appeal process and the IPC considers that the records ought to have been evaluated under Part III of the provincial Act rather than Part II (Part II of the municipal Act rather than Part I), the IPC may require the institution to explain why it exercised its discretion for or against the release of the record.

Fees

The appeal fee for **personal information** requests is \$10.00. This includes requests where an individual (or an authorized representative) asked for records containing only his or her own personal information, or where the records also contain the personal information of other individuals.

The appeal fee for **general record** requests, where an individual asked for records that *do not* contain his or her own personal information, is \$25.00.

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