



Your Business is Affected by a Freedom of Information Request: What You Should Know

October 2016

INTRODUCTION

Under the ***Freedom of Information and Protection of Privacy Act (FIPPA)*** and the ***Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)***, or the acts, everyone has a right to request access to records held by Ontario's public institutions. If a requester asks for records that include information about your business or organization, you may have an interest in the outcome of that request.

The impact on your business is a consideration the institution takes into account when making a decision about whether to release information about your business. You, as the business owner, have certain rights because you have an interest in the outcome of the request. This fact sheet seeks to answer some of the common questions that businesses, as third parties, may have about the freedom of information process.

WHAT INFORMATION CAN BE REQUESTED?

An individual can seek access to records held by public institutions, including those that contain information about your business or organization. The requester does not need to provide reasons for making the request.

Records include information recorded in any format, such as paper or electronic records, digital photographs, videos or maps.

WILL THE INSTITUTION RELEASE INFORMATION ABOUT MY BUSINESS?

The institution is obliged to release information, including information about your business, unless it is exempt from disclosure under the acts.

A record containing information about your business is exempt from disclosure if it meets the three-part test in **section 17 of FIPPA**, or **10 of MFIPPA**, known as the third-party exemption, which is:

1. the information is a trade secret or scientific, technical, commercial, financial or labour relations information, *and*
2. the information has been supplied to the government organization in confidence, either implicitly or explicitly, *and*
3. *one or more* of the following harms will occur if the information is released:
 - prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization,
 - result in similar information no longer being supplied to the government organization where it is in the public interest that similar information continues to be supplied,
 - result in undue loss or gain to any person, group, committee or financial institution or agency, or
 - reveal information supplied to, or the report of, a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute

WILL I BE ASKED FOR MY OPINION ABOUT THE RELEASE OF INFORMATION ABOUT MY BUSINESS OR ORGANIZATION?

Yes. An institution will send a letter to inform you about any access request that may result in the release of information meeting the three-part test. The letter will explain the third-party exemption and ask you for your views on whether it applies to the information in the records. The letter must contain a description of the records, as well as inform you of your right to respond within 20 days of the date of the letter. The institution will also notify the requester that they will have to wait 30 days before getting a decision.

Should you choose to respond, you should not assume that the harms under the third-party information exemption are obvious or can be proven by simply repeating the descriptions of harms in the acts. You must provide **detailed and convincing evidence** to support your claim that the third-party information exemption applies to the records.

CAN I KNOW WHO IS ASKING FOR MY BUSINESS INFORMATION?

You may contact the institution to ask for the name of the requester. Institutions, however, generally do not disclose the name of the requester unless they provide consent. In most cases, the requester's identity is treated as confidential unless the requester is making the request in a professional capacity, such as when a representative of a business makes a request on behalf of the business.

WILL MY VIEWS BE TAKEN INTO ACCOUNT?

If you object to disclosure, the institution will consider your position when making a decision on whether to disclose the records. Although you have the right to explain why records relating to your business should not be disclosed, it is ultimately the institution that makes the decision. Whether the decision is to refuse disclosure of the records, to partially disclose them or to fully disclose them, the institution will advise you and the requester of its decision in writing.

WHAT IF I DISAGREE WITH A DECISION TO RELEASE RECORDS?

If you disagree with the institution's decision, you have 30 days to **file an appeal with our office**. The institution will not release the records to the requester until the time-limit to appeal has expired. As a third party, there is no fee to appeal the institution's decision.

WHAT HAPPENS IF I DO NOT APPEAL THE INSTITUTION'S ACCESS DECISION?

If you do not file an appeal with the IPC, the institution will disclose the records according to its decision after the 30-day appeal period has passed.

IF THE INSTITUTION'S DECISION WAS TO DENY ACCESS TO THE RECORDS, CAN THE REQUESTER APPEAL THE DECISION?

Yes. The requester can appeal the decision to deny access to records within 30 days of receiving the decision letter.

WHAT HAPPENS ONCE AN APPEAL IS FILED?

The IPC will open a file and begin mediation. If it is not possible to settle the appeal through mediation, the file may move to adjudication where an adjudicator will conduct an inquiry. During the inquiry, you will have an opportunity to provide your views on the issues in the appeal. The adjudicator will then resolve the appeal by issuing a written order. For more information on the mediation and adjudication process, please see the **IPC Code of Procedure**.

DO I NEED A LAWYER TO FILE AN APPEAL WITH THE IPC?

No. The IPC's appeal process does not require you to hire a lawyer, although you do have that option.