

## BACKGROUND #2 – AMENDMENTS 2001 – 2006

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT Amendments directly affecting FOI requests 2001 – 2006

The BC Liberals were elected on the pledge to bring in “the most open, accountable and democratic government in Canada.” This included promises that they would:

- maintain and enhance the rights and protections enshrined in BC's Freedom of Information and Privacy Act, and
- ensure that resources are available so that all provincial government bodies are able to meet or beat statutory disclosure timetables

Following staff cuts to FOI staff made by the Government's NDP predecessors in 1998, government ministries had been having more and more difficulty meeting “statutory disclosure timetables”. The new Liberal government's response – in a marked departure from the pledge above – was to amend the FOI act to greatly increase the amount of time public bodies have to respond to requests. This included 5 amendments allowing bodies to “stop the clock” for various reasons.

Between 2002 and 2006, the government made 15 amendments to the FOI act that made access to information more difficult or time-consuming for FOI requesters – see below. In that time, they made almost no changes that improved access or response times.

Date	Amendment	Comment
Apr 11 2002	<b>Definitions</b> “day” does not include a holiday or a Saturday...	A “day” was formerly a calendar day. This change effectively extends the 30-day response time by 12 days.
Apr 11 2002	<b>Section 5 -- How to make a request</b>  (1) To obtain access to a record, the applicant must make a written request that (a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought, (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and (c) is submitted to the public body that the applicant believes has custody or control of the record.  (2) The applicant may ask for a copy of the record or ask to examine the record.	Places additional onus on the applicant. Provides that the request process does not begin until the public body decides “sufficient detail” has been provided. Reduces the public body's urgency to clarify the nature of the records sought by the applicant.

Apr 11 2002	<p><b>Section 7 – Time limit for responding</b></p> <p>(1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).</p> <p>...</p>	
(cont.)	<p>(2) The head of the public body is not required to comply with subsection (1) if</p> <p>(a) the time limit is extended under section 10, or</p> <p>(b) the request has been transferred under section 11 to another public body.</p>	Does not derogate from access rights.
Apr 11 2002	<p>(3) If the head of a public body asks the commissioner under section 43 for authorization to disregard a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the application is made under section 43 to the end of the day a decision is made by the commissioner with respect to that application.</p>	Allows public body to “stop the clock” while a request to disregard a request is dealt with by the commissioner
Apr 11 2002	<p>(4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs:</p> <p>(a) the head of the public body excuses the applicant from paying all of the fees under section 75 (5);</p> <p>(b) the head of the public body excuses the applicant from paying part of the fees under section 75 (5), and the applicant agrees to pay the remainder and, if required by the head of a public body, pays the deposit required;</p> <p>(c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.</p>	Allows public body to stop the clock while a fee is waived or paid.
Apr 11 2002	<p>(5) If an applicant asks the commissioner under section 52 (1) to review a fee estimate or a refusal to excuse the payment of all or part of the fee required by the head of the public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the applicant asks for the review to the end of the day the commissioner makes a decision.</p>	Allows public body to stop the clock while a fee estimate is reviewed.
Apr 11 2002	<p>(6) If a third party asks under section 52 (2) that the commissioner review a decision of the head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the written request for review is delivered to the commissioner to the end of the day the commissioner makes a decision with respect to the review requested.</p>	Allows public body to stop the clock while a review requested by a third party is completed.
Apr 11 2002	<p>(7) If a person asks under section 62 (2) for a review of a decision of the commissioner as head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the request for review is delivered to the minister responsible for this Act to the end of the day the adjudicator makes a decision with respect to the review requested.</p>	Allows public body to stop the clock while a review requested by a third party is completed.

<p><b>May 18 2005</b></p>	<p><b>Section 10 – Extending the time limit for responding</b></p> <p>(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:</p> <p>(a) the applicant does not give enough detail to enable the public body to identify a requested record;</p>	
<p>(cont.)</p>	<p>(b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body, or</p> <p>(c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.</p> <p>(2) In addition to the authority under subsection (1), with the permission of the commissioner, the head of a public body may extend the time for responding to a request as follows:</p> <p>(a) if one or more of the circumstances described in subsection (1) (a) to (c) apply, for a period of longer than the 30 days permitted under that subsection;</p> <p><b><i>(b) if the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate.</i></b></p> <p>(3) If the time for responding to a request is extended under this section, the head of the public body must tell the applicant</p> <p>(a) the reason for the extension,</p> <p>(b) when a response can be expected, and</p> <p>(c) in the case of an extension under subsection (1), that the applicant may complain about the extension under section 42 (2) (b) or 60 (1) (a).</p>	<p>Permits commissioner to allow public bodies any amount of response time considered appropriate</p>
<p><b>Apr 11 2002</b></p>	<p><b>Section 11 -- Transferring a request</b></p> <p>(1) Within <b>20 days</b> after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if</p> <p>(a) the record was produced by or for the other public body,</p> <p>(b) the other public body was the first to obtain the record, or</p> <p>(c) the record is in the custody or under the control of the other public body.</p> <p>(2) If a request is transferred under subsection (1),</p> <p>(a) the head of the public body who transferred the request must notify the applicant of the transfer, and</p> <p>(b) the head of the public body to which the request is transferred must respond to the applicant in accordance with section 8 not later than 30 days after the request is received by that public body unless this time limit is extended under section 10.</p>	<p>Allows public bodies 10 additional days to transfer a request to another body (allowance was originally 10 days).</p>

<p><b>Nov. 1 2002</b></p>	<p><b>Section 12 -- Cabinet and local public body confidences</b></p> <p>(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.</p> <p>...</p> <p><b>(5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.</b></p> <p><b>(6) A committee may be designated under subsection (5) only if</b></p> <p style="padding-left: 20px;"><b>(a) the Lieutenant Governor in Council considers that</b></p> <p style="padding-left: 40px;"><b>(i) the deliberations of the committee relate to the deliberations of the Executive Council, and</b></p> <p style="padding-left: 40px;"><b>(ii) the committee exercises functions of the Executive Council, and</b></p> <p style="padding-left: 20px;"><b>(b) at least 1/3 of the members of the committee are members of the Executive Council.</b></p>	<p>Allows Cabinet to designate any committee as a Cabinet committee and therefore subject to the "Cabinet confidences" exception. This amendment was made in order to extend Cabinet secrecy to certain Liberal Caucus committees.</p>
<p><b>May 18 2006</b></p>	<p><b>Section 17 – Disclosure harmful to the financial or economic interests of a public body</b></p> <p>(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:</p> <p style="padding-left: 20px;">(a) trade secrets of a public body or the government of British Columbia;</p> <p style="padding-left: 20px;">(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;</p> <p style="padding-left: 20px;">(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;</p> <p style="padding-left: 20px;">(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;</p> <p style="padding-left: 20px;">(e) information about negotiations carried on by or for a public body or the government of British Columbia.</p> <p><b><i>(f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.</i></b></p>	<p>New paragraph (f) could be interpreted very broadly and is not balanced with the public interest in maximum transparency and accountability for public institutions.</p> <p>Economic interests are already well protected by 17 (1) (a) through (e).</p> <p>This significantly broadens the exception to a wholesale bid for secrecy around government business relationships.</p>

<p><b>Apr 11 2002</b></p>	<p><b>Section 21 -- Disclosure harmful to business interests of a third party</b></p> <p>(1) The head of a public body must refuse to disclose to an applicant information</p> <ul style="list-style-type: none"> <li>(a) that would reveal <ul style="list-style-type: none"> <li>(i) trade secrets of a third party, or</li> <li>(ii) commercial, financial, labour relations, scientific or technical information of <b>or about</b> a third party,</li> </ul> </li> <li>(b) that is supplied, implicitly or explicitly, in confidence, and</li> <li>(c) the disclosure of which could reasonably be expected to <ul style="list-style-type: none"> <li>(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,</li> <li>(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,</li> <li>(iii) result in undue financial loss or gain to any person or organization, or</li> <li>(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.</li> </ul> </li> </ul>	<p>Addition of “or about” expands the exception beyond information provided by a third party to include information from government or other sources <i>about</i> a third party. Greatly expands potential secrecy regarding business relationships of government.</p>
<p><b>Apr 11 2002</b></p>	<p><b>Section 43 -- Power to authorize a public body to disregard requests</b></p> <p>If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that</p> <ul style="list-style-type: none"> <li>(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or</li> <li>(b) <b><i>are frivolous or vexatious.</i></b></li> </ul>	<p>Adding “frivolous or vexatious” expands possible reasons for allowing public bodies to disregard requests and injects a large element of subjectivity into the process.</p>
<p><b>Apr 11 2002</b></p>	<p><b>Section 75 -- Fees</b></p> <p>(1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:</p> <ul style="list-style-type: none"> <li>(a) locating, retrieving and producing the record;</li> <li>(b) preparing the record for disclosure;</li> <li>(c) shipping and handling the record;</li> <li>(d) providing a copy of the record.</li> </ul> <p>(2) An applicant must not be required under subsection (1) to pay a fee for</p> <ul style="list-style-type: none"> <li>(a) the first 3 hours spent locating and retrieving a record, or</li> <li>(b) time spent severing information from a record.</li> </ul> <p>(3) Subsection (1) does not apply to a request for the applicant’s own personal information.</p> <p>(4) If an applicant is required to pay a fee for services under subsection (1), the head of the public body</p> <ul style="list-style-type: none"> <li>(a) must give the applicant a written estimate of the total fee before providing the service, and</li> <li>(b) <b><i>may require the applicant to pay a deposit in the amount set by the head of the public body.</i></b></li> </ul>	<p>Puts more onus on applicants and more delay to applications, since processing of a request will not start until deposit is paid.</p>

<p><b>Apr 11 2002</b></p>	<p>(5) <b><i>If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services</i></b>, the head may excuse the applicant if, in the head's opinion,</p> <ul style="list-style-type: none"> <li>(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or</li> <li>(b) the record relates to a matter of public interest, including the environment or public health or safety.</li> </ul>	<p>Adds cost and additional steps to the process of making a request. Previously, an official could waive a fee without a formal request from the applicant, and this was often done if a fee would amount to less than the cost of processing the payment.</p>
<p>Apr 11 2002</p>	<p>(5.1) The head of a public body must respond under subsection (5) in writing and within 20 days after receiving the request.</p>	<p>This amendment does not make requests more onerous or lengthy.</p>