



## Third Party Notice

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### INTRODUCTION

The *Freedom of Information and Protection of Privacy Act* (the FOIP Act) provides a right of access to all records under the control of public bodies, subject to limited and specific exceptions. Some of the records to which the FOIP Act applies contain information of third parties, such as private-sector businesses and individuals. Applicants often ask public bodies for access to records that contain third party business and personal information.

In responding to a request for access, a public body is required to apply the exceptions in the Act on a case-by-case basis. The exceptions that may apply to third party business information and third party personal information are mandatory exceptions; if a mandatory exception applies to information in a record, the head of a public body *must* refuse to disclose the information to which the exception applies, unless the third party consents to disclosure of the information.

The FOIP Act includes a process for notifying and consulting with third parties when access to records containing their business or personal information is requested. This process allows public bodies to obtain information relevant to the requested disclosure and, in some cases, a third party’s consent to disclosure.

The purpose of this Bulletin is to explain, in more detail than in *FOIP Guidelines and Practices*, when third party notice should be given and how notice should be given, as well as to offer some practical suggestions to ensure compliance with the notice provisions (**sections 30 and 31**) of the Act.

Detailed consideration of the exceptions that give rise to the notice requirement in **section 30** is outside the scope of this publication. For a discussion of **section 16** of the Act, see *FOIP Guidelines and Practices*, Chapter 4, section 4.2, “Disclosure Harmful to Business Interests of a Third Party.” For a discussion of **section 17** of the Act, see *FOIP Guidelines and Practices*, Chapter 7, section 4.3, “Disclosure Harmful to Personal Privacy.”

*FOIP Guidelines and Practices* is produced by Access and Privacy, Service Alberta and is available on the FOIP website at foip.alberta.ca. Decisions, practice notes and publications issued by the Office of the Information and Privacy Commissioner of Alberta may be found on the OIPC website at www.oipc.ab.ca.

## MEANING OF “THIRD PARTY”

This Bulletin is concerned with “third party” information. “Third party” is defined in **section 1(r)** of the FOIP Act as a person, a group of persons or an organization other than an applicant or a public body. A third party could be an individual, sole proprietorship, partnership, corporation, unincorporated association or organization, non-profit group, trade union, syndicate, or trust.

The Information and Privacy Commissioner found that a partnership in which a public body was a partner was a third party for the purposes of the FOIP Act (*IPC Order 2000-005*).

An employee of a public body may be a third party for the purposes of the Act (*IPC Order 96-019*).

For example, an applicant requested access to witness statements related to the termination of his employment. The statements were obtained in interviews conducted during an investigation by Alberta Municipal Affairs into the applicant’s conduct. The individuals who were interviewed were the third parties in that case. The public body sent each of them a **section 30** notice to help the public body to determine whether disclosure of their personal information would be an unreasonable invasion of their privacy (*IPC Order 98-008*).

A person authorized to exercise the rights of an individual under **section 84** of the FOIP Act is *not* a third party. Nor is an individual whose rights are being exercised by a person authorized to exercise those rights (*IPC Order F2005-021*).

## DECISION WHETHER TO NOTIFY

The FOIP Act’s notification requirements are set out in **section 30** of the Act.

**Section 30(1)** states that the head of a public body must give notice to a third party when the head is considering giving access to a record that may contain information

- that affects the interests of the third party under **section 16** [third party business interests], or
- the disclosure of which may be an unreasonable invasion of the third party’s personal privacy under **section 17**.

The first decision regarding the notification of third parties is whether the public body has any obligation to notify third parties under **section 30**.

## Notice *must* be given under section 30

A public body *must* give notice to a third party under **section 30(1)(a)** if

- the public body is considering giving access to records, and
- the exception for third party business information (**section 16**) may apply to information in the records.

Similarly, a public body *must* give notice to a third party under **section 30(1)(b)** if

- the public body is considering giving access to records, and
- the exception for personal privacy (**section 17**) may apply to information in the records.

If a public body is responding to a continuing request (**section 9**), notice under **section 30(1)** must be given each time the public body is considering giving access to records that may be subject to the exception for business information in **section 16** or the exception for personal privacy in **section 17**. A one-time third party consent would not be sufficient for the purposes of **section 30** because a third party cannot consent to the disclosure of records that have not yet been created.

If a public body has made a decision regarding disclosure of third party information in response to a request, and there is a new request for the same information, the public body may be required to give notice again – and may arrive at a different decision

after taking into consideration a change in circumstances (see *IPC Order F2004-013*).

### Notice *may* be given under section 30

The Act expressly states that a public body *may* (but is not required to) give notice to a third party if

- the public body has determined that **section 16** or **section 17** applies to the third party's information in a record, and
- the public body does not intend to give access to the information.

A public body may decide to give notice, when it is not required to do so, to allow third parties to provide reasons for not disclosing the information or to consent to the disclosure.

Providing notice also allows a public body to make its third party clients aware that an access request has been made for their business or personal information. This may be helpful in the event that the applicant requests a review by the Commissioner of the public body's response to the request.

The Commissioner has said that he cannot impose a duty upon a public body to give notice where the Act does not establish a duty to do so (*IPC Order 97-018*). However, if the applicant requests a review, the Commissioner may, under **section 67(1)(a)(ii)** of the Act, give a copy of the request for review to any person, including a third party who, in the Commissioner's opinion, is affected by the request for review.

In *Order 97-018*, which involved a large number of third parties pursuing action against a public body, the public body did not intend to release third party personal information. The Commissioner was of the view that many third parties were likely to give consent to disclosure of their information if notified. However, he found that the public body was not obliged to contact the third parties and ask whether they would consent to disclosure of their personal information. When a public body does not intend to release a third party's personal information, as in this case, the public body "may" notify the third party of the request, but is not required to do so.

### Notice requirement in section 30 does not apply

The Act specifically states that there are two instances where the notice requirement in **section 30(1)** does not apply.

The first (**section 30(1.1)**) is where the head of the public body has decided to withhold information under the exception for information is or will be available to the public (**section 29**). It is presumed in these cases that the public body has already considered any confidentiality or privacy matters related to the information before deciding to make it publicly available.

The second instance where **section 30(1)** does not apply is where a public body is considering giving access to a record containing information described in **section 17(2)(j)**. This provision in the Act's exception for personal privacy states that, provided it would not be contrary to the public interest, it is not an unreasonable invasion of personal privacy to disclose personal information of a third party which reveals only specified information. Examples of the specified information include enrolment in a school or post-secondary program, receipt of an honour or award, or attendance at or participation in a public event related to the public body. It is important, however, for public bodies to take steps, when the personal information is collected, to allow individuals to request non-disclosure under **section 17(3)**.

The notice provisions in **section 30(1)** also do not apply if the public body has decided to give access to third party information on the basis that the information is clearly not subject to **section 16** or **section 17**. The clearest example of this would be where the third party has already given unqualified consent to disclosure of requested business information and has advised the public body that it does not wish to receive notice of future requests for the same information.

### Section 30 not relevant

There are a number of cases where a third party's interests may be affected, but a public body does not need to consider **section 30**.

The notice requirement is not relevant to a request for records that may be subject to an exception in the Act other than **section 16** or **section 17**. This is the case even if another mandatory exception applies to information in the records. For example, a public body must not disclose information of a third party that is subject to any type of legal privilege (**section 27(2)**). Nevertheless, **section 30** does not apply to a request for access to this category of information.

The same is true for records that may be subject to discretionary exceptions. For example, a public body that is considering withholding records under the exception for advice from officials (**section 24**) is not required to give notice to an organization that has provided advice or recommendations to the public body.

**Section 30** is also not relevant to the disclosure of personal information under **Part 2** of the Act. A public body may disclose personal information under **section 40(1)(b)** – the provision for disclosure that is not an unreasonable invasion of privacy under **section 17**. To rely on **section 40(1)(b)**, a public body must perform the complete analysis under **section 17** and reach the conclusion that disclosure would not be an unreasonable invasion of a third party’s privacy.

If there is doubt as to whether disclosure of a third party’s personal information under **section 40(1)(b)** would be considered an unreasonable invasion of personal privacy, the public body should have the person who asked for the information submit an access request under the FOIP Act. The third party would then be given notice of the request.

Notice is not given under **section 30** to a public body. A public body is not a third party as defined in the FOIP Act (**section 1(1)(r)**). Nor is notice given under **section 30** for the purpose of consulting with a government body in another jurisdiction.

In addition to the notice requirement in **section 30**, the FOIP Act has some special notice requirements that apply to specific provisions. For example, a public body must, where practicable, give notice to a third party before disclosing information that must be disclosed in the public interest under **section 32**. Third party notice under **section 32** involves a different notice process from that under **section 30**.

For a discussion of notification under **section 32** of the Act, see *FOIP Guidelines and Practices*, Chapter 6, section 6.3, “Public Interest.”

Notice requirements to which **section 30** does not apply are outside the scope of this Bulletin.

Any notice that is given to a third party in circumstances where **section 30** does not apply has no standing under the Act.

## Examples

### *Personal information relating to a complaint*

An applicant requests information about an incident that took place on the premises of the public body. The applicant was the subject of a complaint and he would like information contained in the complaint from a member of the public, witness statements from members of the public, and the investigation report produced by a senior employee of the public body.

The public body decides not to disclose any personal information that would identify the complainant and therefore is *not required* to give notice to those individuals. The public body is intending to disclose information that may identify the witnesses and therefore *must* give notice to those individuals. The public body decides to disclose some information in the investigation report, including the identity of the investigator; disclosure of this personal information would not be an unreasonable invasion of personal privacy (**section 17(2)(e)**) and the public body does not need to give notice to the employee.

### *Business information and personal information in a contract bid*

An unsuccessful bidder in a tendering process requests information about the successful bidder’s tender. The successful bidder was advised before submitting the bid that certain parts of the bid would be made public. In addition to the information that the successful bidder knew would be made public, the successful bidder included resumés of the bidder’s key employees. The public body is considering disclosing information about the qualifications of the successful bidder’s key employees and believes that it *must* give notice to the employees because their information may be subject to **section 17**. The public body also decides

to give notice to the successful bidder since the bidder – the employer in this case – supplied the information and information about a business’s key employees may be subject to **section 16**.

## RELATION BETWEEN NOTICE GIVEN BY PUBLIC BODY AND NOTICE GIVEN BY COMMISSIONER

If a public body decides not to give notice to a third party under **section 30(1)**, the Commissioner may nevertheless notify the third party of a request for review. The FOIP Act requires the Commissioner to give a copy of a request for review to the head of the public body concerned and “any other person who in the opinion of the Commissioner is affected by the request” (**section 67(1)**). In *Decision F2008-D-001*, the Adjudicator found that the following were relevant to a determination as to whether a person was “affected by the request” for the purpose of **section 67(1)**:

- Is there an arguable possibility that the person has business or personal information falling within the mandatory exception to disclosure under **section 16** or **17** of the Act?
- Does the request for review, or will the ultimate decision, directly and adversely affect the person?
- Will there be an important impact or serious consequences in relation to the person if that person’s information is disclosed?
- Are representations from the person necessary or desirable in order to determine whether requested information falls within a mandatory exception to disclosure?

Although these factors apply only to **section 67(1)**, a public body that decides not to notify a third party of a request for access may find that the Commissioner notifies the third party later in the process.

## WHO WILL BE GIVEN NOTICE

The third party that receives notice under the Act is not necessarily the person that was the source of the information. An employer may provide personal information about employees in a tendering process (as described above); a contractor may provide confidential business information of the principal in a

report; or a proprietary interest in business information may be transferred as a result of a business transaction.

## Examples

A consulting group has prepared a report on the environmental status of a site and submitted it to the public body. The report states that (a) the consulting group prepared the report on behalf of another organization, and (b) the other organization owns the report. The organization, not the consulting group, would be the third party for the purposes of **section 30**.

Corporation X has been sold and its records have been transferred to the buyer, Corporation Y, with other assets of the corporation. The third party for the purposes of a request to which the exception for third party business information may apply would be Corporation Y.

When giving notice to a third party regarding business information, it is a good practice to call the third party before sending the notice so as to identify the individual best suited to handle the request. This informal consultation with the third party may also lead to timely identification of other third parties that have an interest in the information and may require notice. Contacting a third party prior to giving written notice also allows the public body to explain the process, the importance of responding, any consequences of not responding, and the time lines.

In cases where there is a request for personal information, the issue is less likely to be who the third party is, but who may exercise the rights of the third party. **Section 84(2)** of the FOIP Act states that any notice required to be given to an individual under the Act may be given to the person entitled to exercise the individual’s rights or powers under **section 84(1)**. **Section 84(1)** addresses the rights and powers of

- deceased individuals,
- individuals for whom a guardian or trustee has been appointed,
- an individual who has designated an agent under a personal directive,
- an individual who has granted a power of attorney,
- a minor, and

- a person who has authorized another person to act on his or her behalf.

For example, in *Order F2005-021*, the Commissioner decided that a request by the guardian of his dependent adult son must be treated as if the son himself were making the request. The guardian would receive any notice.

## INITIATING THE NOTIFICATION PROCESS

**Section 30(1)** requires that the third party be given written notice “where practicable and as soon as practicable.”

Giving notice “where practicable” means giving written notice unless it has not been possible to locate and notify the third party after making reasonable attempts to do so. Public bodies are expected to use only their own records and publicly available resources to locate an address for a third party.

Conducting a search through a corporate registry may provide information on the status of a company, organizational and name changes, and the most current contact information. For inactive companies, the search may provide the names of directors or other individuals who may be contacted regarding the disclosure of third party business information.

A public body should not rely on particulars about a third party, such as name, address or phone number, that are contained in historical records. Verification may be needed, since the information may no longer be accurate.

If there is any doubt as to third party’s contact information, the public body may need to adapt its notification process to ensure there is no breach of privacy or confidentiality in the course of the notification process. In *Order 2000-019*, it was decided that the impracticability of giving notice to a third party was a relevant circumstance that weighed in favour of not disclosing the third party personal information.

Giving notice “as soon as practicable” means giving notice as soon as reasonably possible after determining that a third party needs to be consulted. This enables the public body to respond to the request in a timely manner.

**Section 11(1)** states that a public body must make a reasonable effort to respond to a FOIP request within 30 calendar days of its receipt. The Act permits the head of a public body to extend that time limit to allow for the third party notification process (under **section 14(1)(c)** or **section 14(3)**). However, public bodies should not use this time extension to unnecessarily delay responding to the applicant. Time limit extensions are discussed later in this Bulletin.

**Section 30(5)** of the FOIP Act says that when notice is provided to the third party, notice must also be provided to the applicant. Where possible, these notices should be given at the same time.

Separate notice must be given to each third party whose interests may be affected by disclosure of the information. Where a public body is notifying multiple third parties, and especially where the public body is notifying multiple third parties about the same or related records, the public body should issue the third party notices on the same day.

## CONTENT OF NOTICES

All notices under **section 30** must be in writing.

### Notice to third party

**Section 30(4)** says that a third party notice must

- state that a request has been made for access to a record that may contain information the disclosure of which would affect the business interests or invade the personal privacy of a third party;
- include a copy of the record, or the part of it containing the information in question, or describe the contents of the record; and
- state that, within 20 days after the notice is given, the third party may, in writing, either consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.

See **Model Letter L** in *FOIP Guidelines and Practices*, Appendix 3, for an example of a third party notice designed to meet the requirements of **section 30(4)**.

The notice should provide a summary of the exception involved (either **section 16** or **17**) and an explanation of the points that a third party should address if the third party wishes to argue that the information should not be disclosed. In the case of **section 16**, the notice should stress the importance of the third party's providing clear and specific information relating to any harm that may be expected to result from disclosure of the information. The Explanatory Notes (for **sections 16 and 17**) that are attached to **Model Letter L** set these points out clearly for the third party.

Public bodies should make it clear that, for the purposes of **section 30**, they will consider only comments that are related to whether **sections 16 and 17** apply to the information. Comments from a third party about other exceptions are not relevant to the decision that the public body has to make under **section 30**.

It may be helpful to provide the third party with a copy of the records showing the parts of the record that the public body is considering severing. The "severed" information can be highlighted for ease of reference. This may help the third party understand what information the public body intends to release. The third party can then concentrate its efforts on providing input to satisfy the harms test in **section 16** or to explain why the disclosure would be an unreasonable invasion of their personal privacy (**section 17**).

It may not be appropriate to provide a copy of a record if it contains personal information about another third party. In such cases, it may be preferable to describe the record in the notice to avoid a breach of the other third party's privacy (see *IPC Order 99-030*).

The Commissioner stated in *Order 99-023* that he did not have jurisdiction to review the contents of a third party notice. Nevertheless, public bodies should try to ensure that third parties understand the significance of the notice.

Where there is some doubt regarding the identity of the third party, the public body may wish to add a comment that, if the recipient is not the appropriate party to receive the notice, the recipient should notify the FOIP office of the public body.

The identity of the applicant must not be included in the notice, unless the applicant has consented to this disclosure (see *IPC Investigation Report 98-IR-009*).

The notice should include the name, position title and telephone number of the person in the public body that the third party may contact for more information.

### Notice to applicant

When notice is given to a third party, the public body must also provide a notice to the applicant. **Section 30(5)** requires the notice to state that

- the record requested by the applicant may contain information the disclosure of which would affect the business interests or invade the personal privacy of a third party;
- the third party is being given an opportunity to make representations concerning disclosure; and
- a decision regarding access to the requested record(s) will be made within 30 days after the day notice is given to the third party.

See **Model Letter M** in *FOIP Guidelines and Practices*, Appendix 3. This model letter includes notice of a time limit extension.

The identity of the third party should not be included in the notice sent to the applicant.

### METHODS OF SERVING NOTICE

Any of the methods of serving notice in **section 83** of the Act may be used to notify third parties. That section requires that any notice or document to be given to a person under the Act be given

- by sending it to the last known address of that person by prepaid mail;
- by personal service (e.g. by registered mail or courier);
- by substitutional service if authorized to do so by the Commissioner (e.g. by placing a public notice in a trade journal or in other specialized or general media – this method may be used where a large number of third parties must be notified or where a third party cannot be found

and the nature of the information lends itself to this type of notice);

- by fax; or
- in other electronic form (e.g. by e-mail), if the person to whom the notice or document is to be given has consented to accept the notice or document in that form.

Public bodies should choose a delivery method that ensures that notice is given promptly. This is particularly important for notice under the FOIP Act because the Act's time limits for responding are relatively short. If there is a small volume of records, the records can be faxed to the third party. For larger volumes, records should be sent by courier or priority post. Prompt delivery allows the third party as much time as possible to respond, so regular mail is generally not recommended.

If a public body is sending the notice by fax or other electronic means, care should be taken to prevent unauthorized disclosure of third party information. For some measures recommended by the Commissioner, see *IPC Investigation Report 2001-IR-001*.

Government departments and agencies, boards and commissions should also refer to the requirements for transmission of personal information in the Government of Alberta's *Policy for the Transmission of Personal Information via Electronic Mail and Facsimile*, developed by the Office of the Corporate Chief Information Officer.

## RESPONSE FROM THIRD PARTY

A third party has 20 days after the notice is given to respond, either by consenting to the release of the information or by making representations as to why the information should not be released. The response from the third party must be in writing.

If, as a result of consultation, the third party gives consent to disclosure of its business information, the public body cannot withhold that information unless another exception applies (**section 16(3)(a)**). With respect to personal information, the Commissioner has ruled that, if a third party gives written consent to or requests disclosure of his or her personal information (under **section 17(2)(a)**), the public body must

disclose the third party information unless another exception applies (see *IPC Order 2000-029*).

The public body should be reasonably satisfied that the person giving consent on behalf of a business or other organization is an officer, employee or corporate officer who is authorized to provide such consent. A written response from the third party, signed by a person in a responsible position, should be sufficient.

If the third party makes representations to the public body about non-disclosure of the information, the public body must consider the representations. If it appears that the third party has not understood the process, the public body should contact the third party by telephone to discuss the matter further.

If no response has been received by the 21<sup>st</sup> day after the notice was given, the public body has to make a decision about disclosing the information (*IPC Order 98-006*). The decision will have to be based upon other available information and consideration of any applicable exceptions in the Act.

A third party has no obligation to respond to a notice, and a public body should not draw any conclusions from the lack of response. The third party should be contacted by telephone or fax to discuss why a response has not been made and advised of the consequences. A follow-up letter confirming the discussion may be sent to the third party.

If the third party requests a few extra days to respond, and the public body agrees, these days would be subtracted from the 10 days in which the public body must make a decision.

The Act does not allow public bodies to provide time limit extensions to third parties. However, a third party that does not meet a time limit for making representations regarding non-disclosure has the ability to request a review by the Commissioner if the public body decides to disclose the third party's information. After notification of the public body's decision, the third party has 20 days to request a review.

## DECISION BY PUBLIC BODY

The public body is required to decide within 30 days after the third party notice has been given whether to



give access to all or part of a requested record. **Section 31(1)** says that a decision cannot be made until the third party responds or on the 21<sup>st</sup> day after notice has been given to the third party, whichever comes first.

Under **section 31(2)**, the public body must give written notice of its decision, including reasons for the decision, to the applicant and the third party. This notice is required whether the decision is to disclose or withhold records, and whether the public body agrees or disagrees with the third party. Notification of the public body's decision regarding access to the record must be given by the 30<sup>th</sup> day after notice was given to the third party.

If a public body has taken reasonable steps to locate a third party and sent a notice, but it is clear that the third party can no longer be contacted at the address to which the notice was sent and no new contact information is available, the public body would not send a notice of the decision.

In *Order 2000-014*, the Information and Privacy Commissioner provided the following guidance regarding the application of **section 31**.

- The public body must notify the applicant and the third party of its decision at the same time.
- When giving notice of a decision, public bodies should avoid using the phrase “partial access” and should be as specific as possible about records to which they have decided to give access and those which they have decided to withhold.
- If a public body has decided to give an applicant access to records, notified the third party under **section 31**, and later decides not to give access to some or all of the records, the public body should immediately notify the applicant of that decision.
- If a public body decides to give an applicant access to records and gives a notice under **section 31**, and later the public body and the third party decide that some or all of the records are no longer at issue, the public body should immediately respond to the applicant, as required by **section 11** of the Act. Any extension allowed under **section 14(1)(d)** immediately ends when the records are no longer at issue in a review. A

failure to respond under **section 11** at that time is a deemed refusal to provide access.

### When access to the record is granted

If the public body decides to give an applicant access to a record containing third party information, the public body must inform the applicant of the decision. The notice must state that access to the record or part of it will be provided within 20 days after that notice is given, unless the third party asks for a review by the Information and Privacy Commissioner (**section 31(3)**).

The public body must inform the third party of its decision and the reasons for it, and advise the third party of the right to request a review by the Commissioner, within 20 days of the decision to grant access. The Commissioner emphasized the importance of the content of this notice for the review process in *Order 98-006*.

The public body must not give immediate access to the record(s) because the third party has the right to request a review of that decision (*IPC Order 98-006*). Even where a third party has consented to disclosure, the public body should consider the possibility that a third party may request a review on the basis that the person who consented was not authorized to do so; that the third party did not believe that he or she was actually giving consent; or that the third party did not understand what he or she was consenting to disclose.

The public body should contact the Commissioner's Office on the 21<sup>st</sup> day to see whether a request for review has been submitted.

If the third party does not request a review within the 20-day period after notice of the decision has been given, the applicant should be granted access to the records on the 21<sup>st</sup> day, subject to the application of any other discretionary exceptions. It is important for the public body to respond to the applicant on the 21<sup>st</sup> day in order to comply with the time limits in the Act.

The applicant must not be given access to any record or part of a record that is the subject of a Commissioner's review until the review is completed.

If the review affects only some of the records proposed for disclosure, as part of its duty to assist, the public

body may wish to consult with the applicant about the disclosure of other responsive records in the meantime. The outcome of the review will determine whether access is given to any record that is the subject of review.

### When access to the record is denied

If access to part of the record containing third party information is denied, the public body must inform the applicant of the decision and the reasons for it. The severed records must then be released to the applicant. The public body must inform the applicant that he or she has 60 days to request a review by the Commissioner of the public body's decision, under **section 65(1)**.

If a record is being withheld in its entirety, no part of the record would be disclosed to the applicant. The applicant would be advised of his or her right to request a review of the public body's decision.

The public body must also inform the third party of this decision and the reasons for it, and advise that the applicant may, within 60 days, request a review of the decision by the Information and Privacy Commissioner.

See **Model Letters N (Notice to Third Party of Decision)** and **O (Notice to Applicant of Decision)** in *FOIP Guidelines and Practices*, Appendix 3.

### TIME LIMITS

Time limits for responding to access requests are set out in **section 11(1)** and **section 14** of the Act. When a public body is processing a request involving third party notice, the public body must ensure that both the applicant and the third party are able to exercise their rights under the Act with respect to the third party information, including their right to request a review by the Information and Privacy Commissioner. The time limits for the parties to exercise these rights are set out in **sections 30** and **31**.

A public body may be able to consult with a third party and still respond to an applicant within the original time limit of 30 days from the receipt of the request (**section 11**). This could happen if, for example, the applicant expressly requested the personal information of a third party, the third party

was notified quickly and the third party responded quickly. However, in most cases an extension will be needed for the notification process.

*Prior to giving notice* to a third party, a public body may extend the time limit for responding to a request

- to obtain more detail to identify the records (**section 14(1)(a)**);
- to search a large volume of records, which would unreasonably interfere with the operations of the public body (**section 14(1)(b)**);
- to consult with a third party or another public body (**section 14(1)(c)**); or
- if multiple concurrent requests have been made by the same applicant or by two or more applicants who work for the same organization or who work in association with each other, with the Commissioner's permission (**section 14(2)**).

Only the Commissioner can approve a request for a time extension for one of the reasons set out in **section 14(1)** for longer than 30 days. Such a request must be made in writing to the Commissioner.

*After giving notice* under **section 30**, a public body must observe the time limits set out in **section 31**. Extension of the time limit for responding to the request in order to comply with **section 31** is permitted under **section 14(3)**. The permission of the Commissioner is not required.

The applicable time limits are as follows:

- a third party has 20 days to respond, in writing, to the notice (**section 30(4)(c)**);
- no decision can be made until the third party's response is received, or 21 days after notice is given, whichever comes first (**section 31(1)**);
- the public body must make a decision whether to grant access or not and notify the third party and applicant of this decision within 30 days after third party notice is given (i.e. the public body has at least 10 days to consider the response from a third party and make the decision) (**section 31(1)**);

- after the public body's notice of a decision is given, a third party has 20 days to ask for a review (**section 31(3)**); and
- after the public body's notice of a decision is given, the applicant has 60 days to ask for a review (**sections 31(4)** and **66(2)**).

The Act does not allow for extension of any of the time limits in **section 31** for any reason.

### Calculating time limits

There are two general points to keep in mind regarding the calculation of time limits.

The first day of a time period starts the day after a particular action occurs, such as the receipt of a request or the giving of a notice. The day in which the request is received or the notice is given is not counted as the first day of the time limit set out in the Act.

If the authorized office of a public body is closed on the last day of a time period, the next business day will be calculated as the last day of the time limit. For example, if the final day for responding to a third party notice falls on a statutory holiday or a day when the authorized office of the public body is closed, the response is due on the next business day.

### Effect of time limits

The 20-day time period allowed for a third party to respond to a notice begins on the day after the third party notice is given (i.e. the day after the public body sends the notice), not the date the third party receives it. The date on which the notice is sent is the date marked on it indicating posting or electronic transmission (e.g. the postmark for regular mail, and the transmission date for e-mail or facsimile). For example, if a public body sends a third party notice by regular mail and the envelope is postmarked March 1, the third party has until March 21 to respond. For this reason, public bodies should choose a delivery method that ensures that notice is given promptly.

Contacting a third party prior to giving written notice is a good practice. It enables the public body to explain the process, the importance of responding, the consequences of not responding and the time limits.

### Time limit extensions for complex requests

If a public body is processing a request that requires an extension for several reasons – for example, the request involves a large number of records, will necessitate consultation with another public body, and will also require third party notice – the public body should extend the time limit for responding under **section 14(1)** first. Once notice has been given under **section 30**, the public body can rely only on **section 14(3)**. **Section 14(3)** allows a public body to extend the time limit for responding to a request to enable the public body to comply with the requirements of **section 31**.

If the request involves multiple third parties, the most practical method of working with the time limits is to ensure that all third parties have been identified before beginning the notification process, then to send out all the notices at the same time. Public bodies should try to plan the processing of complex requests so that there is a need to extend the time limit only once.

From time to time, a public body identifies an additional third party late in the processing of the request. This may happen because additional records are identified after the initial search or because a third party notice results in information that suggests further that the public body should provide notice to another third party. If the public body then needs more time to complete the third party notice process, the time limit may be further extended under **section 14(3)** to comply with the requirements of **section 31** (see *IPC Investigation Report 2000-IR-001*).

In these cases, it is recommended that the public body make its decision concerning access to the records on which it has given notice and provide a response to the request with respect to those records. The public body should delay its response only with respect to the records for which the notification process is not complete. Although the Act does not specifically provide for responding to a request in part, this approach to timely release of records is consistent with the spirit of the Act.

Under these circumstances, if the applicant were to request a review, the time limit for the applicant to

request the review would be 60 days from the day on which the *final* response to the request was given.

If the third party requests a review by the Commissioner under **section 65(2)**, the time limit for the public body to respond to the request is extended under **section 14(1)(d)**. The Commissioner's Office

will send a notice of acceptance of the request for review to the third party, the head of the public body and others affected, including the applicant.

The applicant has the right to make a complaint to the Information and Privacy Commissioner about any time limit extension.

#### Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to December 31, 2008.

#### Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

#### Further Information

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