

Fact Sheet: Time Extensions

This fact sheet outlines the rules and processes for time extensions under the *Access to Information Act* (ATIA).

What is a Business Day?

The *Access to Information Act* defines a business day as a day other than a Saturday, a holiday, or a day when Government of Alberta offices are closed as part of the Government of Alberta's Christmas closure. Sundays are not considered a business day and fall under the definition of "a holiday" under the *Interpretation Act*.

Time limit for responses under ATIA

Under section 13 of the ATIA, the head of a public body must make every reasonable effort to respond to an access to information request no later than 30 business days after the requirements of section 7(2) have been met unless:

- (a) the request has been disregarded under section 9 or declared abandoned under section 10,
- (b) the time limit is extended under section 16, or
- (c) the request has been transferred under section 17 to another public body.

Section 3 of the Access to Information Regulation requires public body's to make available information on where access to information requests can be submitted. Where an applicant physically delivers an access request to a public body during normal business hours to an office that is not designated to receive the request, the time limit of 30 business days does not commence until the request is provided to the office authorized to receive requests, commonly referred to as an ATI Office and/or the Coordinator.

If a request does not provide enough detail to enable a public body to locate or identify a record within a reasonable time with reasonable effort, the public body may request further information from the applicant that is necessary to process the request, and the applicant must respond within 30 business days with the information being requested. Best practice in this regard is to email the applicant, ask questions, and gather any other information necessary in order to fulfill the public body's duty to assist (see Fact Sheet: Duty to Assist for more information).

The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

Transferred requests

If an access to information request must be to another public body, the applicant's ability to access records should not be impacted. A request for access to information must be transferred within 15 business days after a public body receives an access request. The public body that receives the transferred request must make every reasonable effort to respond to the request within 30 business days after receiving the request.

Extending the time limit

Section 16 of the ATIA sets out the rules around extending time limits for responding to access to information requests.

A public body must document the reasons for a time limit extension. This requirement is in line with section 5(4) of the Access to Information Regulation and adds accountability.

The head of a public body may extend the time for responding to a request for up to 30 business days:

1) If the applicant agrees

Section 16(1)(a) allows a public body to extend the time for responding to an ATI request if the applicant agrees.

As a best practice, a public body should get an applicant's agreement to an extension in writing.

2) If a large number of records are requested and more time is required to process the request

Section 16(1)(b) says that in order to extend a time limit under this subsection, not only does a public body need to show there is a large volume of records responsive to a request, but it also needs to show that more time is required to process the request.

- It is generally considered that 500 or more pages to be the threshold for what may constitute a large volume.
- If the volume is less than 500 pages, a rationale should be documented to provided why the circumstances might constitute a "large volume".

Some factors that may be considered for what constitutes a large volume and more time is required:

- The number of pages of records that need to be searched or that are responsive to the request.
- Accessibility of the records, number of systems and officials involved and any problems encountered.
- Formats of records that require different handling methods or expertise.
- The type and complexity of records including processing spreadsheets or audio-visual recordings.

Some factors that may not be considered for what constitutes a large volume and more time is required:

- If the program areas have not provided responsive records in a timely manner or the program area has not provided a reasonable estimate for volume. For example, an “anticipation” of a large volume without detailed rationale.
- Poor records management practices.

These are not an exhaustive list of factors for consideration and are provided as examples. A public body should use their discretion on when and for how long of time extension is needed.

3) If consultations are required with a third party, another public body or another entity

A public body must consider all relevant factors when deciding whether to grant access to a record under the ATIA.

Section 16(1)(c) allows a public body to extend time limits where consultation is required with another public body, entity or third party in order to decide whether to grant access.

- “Third Party” means a person, group of persons, or an organization other than an applicant or a public body.
- Another public body would include another public body that either created or contributed to a record.
- Another entity could include another government or other organization that created or contributed to a record.

Section 16(1)(d) does not apply to records that contain third party business information as described in section 19(1) or (2), or where disclosure may be an unreasonable invasion of a third party’s personal privacy under section 20.

4) For additional reasonable periods:

If a 30 business day extension is not sufficient in these circumstances, section 16(2) allows the head of a public body to extend the time for response to a request for additional reasonable periods.

“Reasonable” means the time extension period must be reasonable based on good judgement and is considered rational, fair and practical under the circumstances.

A public body should be able to demonstrate why the extended period is required and outline the circumstances which justify that the length of time for the extension is reasonable. This includes providing an explanation to the applicant and documenting all decisions as required by section 5(4) of the ATI regulation.

The following factors may be considered based on the circumstances of the request:

The number of pages of records that need to be searched or that are responsive to the request.

- The type and complexity of records including processing spreadsheets or audio-visual recordings.
- Nature of the records and complexity of a consultation with another body.
- Number of other public bodies or third parties that need to be consulted.
- Requests from public bodies or third parties for additional time to review records for review
- Approximate total volume of records involved and the volume to be sent for the consultation(s) (required).
- Any challenges in contacting third parties or another public body(ies) for consultation.

Public bodies are encouraged to work with their applicants where possible on reasonable time extensions.

5) If multiple concurrent requests are made

Section 16(3) allows a public body to extend time limits for response if multiple concurrent requests have been made by the same applicant or by two or more applicants who work for the same organization/in association with each other.

Concurrent means at the same time. For example, two or more requests received from the same applicant within a 30 business day time period of the access

request is considered to be concurrent. A public body may extend a timeline for processing a request where they are already working on a request from the same or related applicant.

A public body should consider all relevant factors that will affect the processing of the requests before deciding whether to take an extension under this subsection, including:

- the number of concurrent requests received,
- the dates that the public body received each request,
- whether the same applicant submitted each request,
- the number of consultations, third party or other, required,
- approximate volume and complexity involved in the access request and the concurrent requests,

6) If third party records are involved

Section 16(4) requires where a public body is considering giving access to a record that may contain third party business information as described in section 19(1) or (2), or the disclosure may be an unreasonable invasion of the party's personal privacy under section 20, the public body may extend the time for responding to a request or part of a request for the period of time necessary to enable the head to comply with the requirements of section 36.

This formal consultation process and timelines are detailed in section 35 and 36 of the Act.

Informing the applicant

If the time for responding to a request is extended, the public body must tell the applicant in writing the reason for the extension, when a response can be expected, and that the applicant may request a review of the extension by the Information and Privacy Commissioner. More details provided to the applicant in a notice about the extension may preclude a request for review being submitted by the applicant.

The notification should be given as soon as it is apparent that a request cannot be processed within the initial 30 business day period.

Requests for review

Where a third party who was consulted about an access to information request asks the Information and Privacy Commissioner to review the public body's decision on disclosure of their records the time for responding to a request or part of a request is automatically extended under section 16(7) with

respect to the relevant record or part of the record until the review and inquiry process has concluded.

If a review by the Information and Privacy Commissioner is requested by a third party, the records subject to the review must be withheld from the applicant until the review/inquiry process is completed. A public body should not wait until the review process is completed before continuing to process any responsive records that are not related to the review.

If the time for responding to a request or part of a request is automatically extended under this subsection, the public body must notify the applicant of the extension and the basis for the extension.

Emergencies, disasters or other unforeseen events resulting in unplanned operational closures or interruptions

Under 16(9), the time limit for responses to access to information requests are automatically extended where a public body is faced with an emergency, disaster or other unforeseen event resulting in unplanned operational closure or interruptions. Examples of such events includes fires, floods, pandemics, etc.

Time limits are automatically extended until a public body can get back to normal operations and for a public body to put all its efforts into dealing with the emergency event.

If the time for responding to a request is automatically extended as result of an emergency event, the public body must notify the Information and Privacy Commissioner as soon as practicable of:

- The emergency, disaster or other unforeseen event, the anticipated end to the unplanned operational closure or interruption, and
- The date when the emergency, disaster or other unforeseen event has ended or when normal operations have resumed.

The initial notification should occur as quickly as possible after an emergency event occurs and must include details of the emergency, disaster or unforeseen event and an anticipated end date of the unplanned operational closure or interruption.

If the time for responding to a request is automatically extended under this section, the public body must also notify the applicant as soon as practicable:

- When normal operations have resumed,
- When a response to the applicant's request may be expected, and

- That the applicant may request a review of the extension by the Information and Privacy Commissioner.

Role of the Information and Privacy Commissioner

The Information and Privacy Commissioner may investigate and attempt to resolve complaints that an extension of time for responding to a request is not in accordance with section 16 through an expedited inquiry process, whereby a public body will be required to provide the Office of the Information and Privacy Commissioner (OIPC) with a submission of the issue within a short deadline. The Information and Privacy Commissioner can confirm or reduce the extension of a time limit for response.

For additional guidance, refer to the OIPC website to understand what information public bodies may be required to prepare if a review under section 10 is conducted.

Scenarios

Scenario 1

A public body receives a request for access to information that contains some responsive records that originated with another public body. The public body decides the other entity must provide context to determine if the records can be disclosed. The applicant is informed that more time is needed to

consult with another entity under section 16(1)(c) and the time limit for responses is being extended for 30 business days.

While processing the records, the other entity contacts the public body and advises they need more time to provide a response. The original public body contacts the applicant to discuss the request, and the applicant agrees to extend the time limit for response another 45 business days.

Scenario 2

A public body receives three requests from the same organization over the course of a week. The public body reviews and determines in consultation with their legal counsel that the requests would be considered multiple and concurrent and extends the deadlines for all request by 30 business days under section 16(3).

Scenario 3

A village is evacuated due to a wildfire. All access to information requests are automatically extended under section 16(9). The ATI Coordinator sends an email to the Information and Privacy Commissioner to inform them of the operational closure and the suspension of access to information services. The ATI Coordinator requests their system people to update the website stating they are in an emergency situation and will return to normal business practices when possible.