



Duty to Assist #1: Communication with Applicants Guidelines for Public Bodies and Municipalities

Office of the Information and Privacy Commissioner for Nova Scotia¹
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Notice to Users

This document is intended to provide general information only. It is not intended nor can it be relied upon as legal advice. As an independent agency mandated to oversee compliance with *FOIPOP*, *MGA* and *PHIA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot approve in advance any proposal from a public body or municipality. We must maintain our ability to investigate any complaints and to provide recommendations in response to these complaints. The contents of this document do not fetter or bind this office with respect to any matter, including any complaint investigation or other matter respecting which the Information and Privacy Commissioner for Nova Scotia will keep an open mind. It remains the responsibility of each public body or municipality to ensure that it complies with its responsibilities under the relevant legislation.

¹ This guide was adapted with permission from materials prepared by the Office of the Saskatchewan Information and Privacy Commissioner.

INTRODUCTION

This guide is a first in a series of guidelines describing how public bodies and municipalities can satisfy their duty to assist applicants under Nova Scotia's access to information laws. The first and best way to satisfy the duty to assist is to meaningfully communicate with the applicant.

Public bodies and municipalities have a duty to assist applicants. The law requires that they make every reasonable effort to assist applicants and to respond without delay, openly, accurately and completely.

The duty to assist requires a public body or municipality to make every reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process and seek any necessary clarification on the nature or scope of the request within legislative timeframes. Communicating with the applicant at an early stage and throughout the process will not only help to clarify the request but should also streamline the search for and preparation of records for release. Most importantly, meeting the duty to assist may result in a more satisfactory experience for all involved, and perhaps, result in fewer complaints to this office.²

LEGISLATION

Section 7(1)(a) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* states:

Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

- (a) Make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely.*

Section 467(1)(a) of *Part XX of the Municipal Government Act (MGA)* states:

Where a request is made pursuant to this Part for access to a record, the responsible officer shall

- (a) Make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely.*

PRINCIPLES³

The following principles should guide public bodies and municipalities in meeting the duty to assist:

- Public bodies and municipalities should adopt a liberal interpretation of the access request.
- Any ambiguity should be resolved in favour of the applicant, in so far as the legislation allows.
- Public bodies and municipalities should avoid narrow interpretations of the access request, unless agreed to by the applicant.
- Public bodies and municipalities should initiate contact with an applicant and any applicable third parties as soon as reasonably practicable, generally within a few days of receipt of the request.
- If a public body or a municipality fails to clarify a request, it cannot rely on a narrow interpretation of the request upon review.

² *Understanding the Duty to Assist*, Office of the Saskatchewan Information and Privacy Commissioner, available online at: <https://oipc.sk.ca/assets/understanding-the-duty-to-assist.pdf>.

³ These principles have been adapted from the Office of the Information Commissioner of Canada, *The Duty to Assist: A Comparative Study*, available online at <http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari.aspx>, May 2008. The principles represent best practices from across Canada.

- Public bodies and municipalities should explain the reasons for their decision to the applicant in plain language.
- Public bodies and municipalities should always verify in writing any agreement with the applicant.

WHEN SHOULD YOU CONTACT THE APPLICANT?

TRICK QUESTION! Contact the applicant **every time** you receive an access request.

Always attempt to contact the applicant within 1-2 days of receiving an access request, using the contact information provided by the applicant. Be sure to document all communication with the applicant, including any unsuccessful attempts at reaching the applicant. Follow up after your initial telephone call with an acknowledgement letter or email.

WHY SHOULD YOU CONTACT THE APPLICANT?

It may make your job easier: Discuss whether the request can be accommodated outside the formal process; for example,

- Can this information be routinely released?
- Have the records sought been released previously through an earlier access to information request?
- Does the applicant only want an answer to a question and not access to records?
- Is there another Act or administrative process that provides a right of access?
- Is the information being sought available publicly online or in a government publication? If it is, direct the applicant where to look.

It will help you to determine what information the applicant is seeking: Sometimes access requests may be poorly worded because:

- The individual does not have a sophisticated understanding of the public body's or the municipality's mandate and record holdings; or
- The individual may frame the request in a concealed or obscure manner thinking that if he or she asks for everything, the public body or municipality may unknowingly disclose the "smoking gun".⁴ This approach is especially common if the applicant is seeking controversial or contentious information, but in reality this approach seldom achieves the results that the applicant thinks it will and frustrates all parties.

In either of these situations, early communication with the applicant will ensure that the applicant understands that a clear and specific request will better assist you in locating the records responsive to the request. Let applicants know that the law is on their side—you must process requests for any government information, no matter how sensitive.⁵

⁴ FIPA: B.C. Information and Privacy Association, Plan Your Request, online source: <https://fipa.bc.ca/get-help/request-information-from-public-bodies/plan-your-request-strategy/> (FIPA).

⁵ FIPA.

It will increase the applicant's confidence in the process: Some ways to do so include:

- Explaining the steps in the process;
- Seeking any necessary clarification on the nature or scope of the request;
- Keeping the applicant informed of any time extensions or delays; and
- Referencing the relevant statute, rather than internal processes, for authorizing any action.

It might reduce complaints to this office: Sometimes an applicant's appeal has more to do with his or her frustration with a public body or municipality than with the reasons behind the decision; however, this frustration can be lessened by:

- Establishing a trusting relationship at the outset;
- Clearly explaining the reasons for your decision, including providing a rationale for applying any exemptions, as required by s. 7(1)(ii) of *FOIPOP* and 467(2)(ii) of the *MGA*. In other words, don't just cite the legislation—explain why all requirements of the exemption fit; and
- Inviting the applicant to contact you with questions or concerns.

HOW TO CONTACT THE APPLICANT

Initial contact - contact the applicant within 1-2 days in order to:

- Explain the process.
- Attempt to determine the needs of the applicant.
- Figure out if any information in the request can be/has been proactively released.
- Clarify or narrow the request if needed.

Communicate with the applicant throughout the process in order to:

- Notify the applicant of delays or time extensions.
- Notify the applicant if any third parties have been provided notice.
- Simplify the processing of complex or large volume requests. Once you have conducted a search for records, but before processing them for the response, contact the applicant to discuss the nature of the records found. It is possible that, once the applicant knows the exact nature of the records, he or she will be able to reduce the scope of the request or will focus in on a few specific record types.
- Combine multiple access requests into one request for all related information if the applicant has made multiple requests related to a single topic. Ensure that the applicant agrees that such an approach will satisfy his or her requests. This approach will allow you to respond more efficiently.
- Confirm, in an email or letter, any changes or narrowing that the applicant has agreed to.

Explain the following to the applicant before issuing a decision:

- What your decision actually means (e.g., what does it mean that the applicant's request has been granted in full, granted in part or withheld).
- What sorts of records any exemption was applied to and how does that record fall into that category.
- How the applicant can file a review to this office if he or she is unsatisfied with your decision.

APPLICANT NOT COOPERATING?

It is possible that after numerous attempts, the applicant chooses not to engage or cooperate with the public body or municipality in the process. In those cases, the result may still be a request for review, but the topic of duty to assist is less likely to be an issue in any report issued. Ensure that you keep records of all attempts to engage the applicant.

QUESTIONS?

This guidance was prepared by the Office of the Information and Privacy Commissioner for Nova Scotia. Whether you are an applicant, a public body or a municipality, we encourage you to contact us if you have any questions about the access to information process in Nova Scotia.

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