



Time Extension Request Guidelines for Public Bodies

Office of the Information and Privacy Commissioner for Nova Scotia
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INTRODUCTION

Under section 9 of the *Freedom of Information and Protection of Privacy Act* (“*FOIPOP*”) public bodies may take a thirty day time extension in prescribed circumstances. A further time extension may be granted with the permission of the Information and Privacy Commissioner.¹ These guidelines are intended to assist public bodies with establishing whether the conditions apply for requesting time extensions under section 9(1). By submitting the requested information to the Information and Privacy Commissioner when a further time extension is sought the Information and Privacy Commissioner will have the information required to determine whether a further time extension is authorized².

LEGISLATION

Extension of time for response

9(1) The head of a public body may extend the time provided for in sections 7 or 23 for responding to a request for up to thirty days or, with the Information and Privacy Commissioner’s permission, for a longer period if

- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (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
- (c) more time is needed to consult with a third party or other public body before the head of the public body can decide whether or not to give the applicant access to a requested record.

(2) Where the time is extended pursuant to subsection (1), the head of the public body shall tell the applicant

- (a) the reason;
- (b) when a response can be expected; and
- (c) that the applicant may complain about the extension to the Review Officer.

A NOTE ABOUT STATUTORY TIMELINE

Sections 6, 7, 9 and 22(3) of *FOIPOP* are crucial to understanding and applying the statutory timelines for responding to access requests. A public body may only suspend a statutory timeline if it is authorized under s. 7(2). If an application has been received and an applicant has met the requirements of s. 6(1)(b) and (c), the public body has 30 days to respond to the access request. A public body’s decision to put a request “on hold” (i.e. stop the clock) does not suspend the statutory timeline if there is no authority to do so under s. 7(2).

¹ 1 The Information and Privacy Commissioner for Nova Scotia is also known as the Review Officer and is appointed as the independent oversight authority under the Freedom of Information and Protection of Privacy Act, the Municipal Government Act, the Personal Health Information Act, and the Privacy Review Officer Act

² These guidelines were adapted from similar guidelines prepared by the Offices of the Information and Privacy Commissioners in Alberta, Ontario, Newfoundland and British Columbia.

If the statutory deadline for responding has passed, a public body is not authorized by s. 9(1) to extend the time for responding. Similarly, if the deadline for responding has passed the Information and Privacy Commissioner cannot grant a time extension under s. 9(1).

Clarify or Narrow?

It is important to understand the difference between a clarified request and a narrowed request. To “clarify” is to make clear what the requester is seeking – so that you are able to identify the record sought. To “narrow” is to reduce the scope of the request, i.e. decreasing the number of records requested. Time extensions for clarification are contemplated under s. 9(1)(a) discussed below.

APPLICATION

Under s. 9(1) of *FOIPOP* there are three circumstances in which the Information and Privacy Commissioner may give a public body permission to extend the time for responding to an access request. Permission may be granted if one or more of ss. 9(1)(a), (b) or (c) apply.

(1) SECTION 9(1)(a) – FAILURE TO PROVIDE SUFFICIENT DETAIL

This provision applies when an applicant does not give enough detail to enable the public body to identify a requested record. If the public body can identify the requested record but is seeking to narrow the scope of the request s. 9(1)(a) would not apply.

Test: When applying for a time extension, the public body must explain why more detail is required to identify a record.

Other Relevant Information:

- Dates of request and follow up with applicant, including efforts made by the public body to contact the applicant and clarify the request.
- If the public body has already requested further details, what is the expected response date?

(2) SECTION 9(1)(b) – VOLUME & UNREASONABLE INTERFERENCE

This provision applies when a large number of records have been requested or must be searched **and** meeting the time limit would unreasonably interfere with the operations of the public body.

Test: The public body must demonstrate that:

- 1) a large number of records have been requested or must be searched, **and**
 - 2) meeting the time limit would unreasonably interfere with the operations of the public body.
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Both a large volume of records and unreasonable interference with operations must be present in order to meet the test for s. 9(1)(b). Consider the following factors in evaluating whether or not s. 9(1)(b) applies:

Volume:

- How many pages?
- Do the records require special handling?
- Does the type of record require different methods of searching or handling?
- How does volume compare with average request volume?
- Existence of previous requests for the same or similar records

Circumstances that may contribute to unreasonable interference:

- Significant increase in access requests (e.g., sharp rise over 1-4 months)
- Significant increase in administrator caseloads (sharp rise in average caseload)
- Computer systems or technical problems
- Unexpected leave
- Unusual number (high percentage) of new administrators-in-training
- Program area discovers a significant amount of additional records
- Type of records (e.g. maps, photographs, etc.)
- Multiple formats of records (e.g. database, email and hard copy records are all responsive to the access request)
- Number of program areas searched
- Location of records (e.g. records held in multiple locations, records stored off-site or regionally)
- Degree to which the subject matter expertise of the department holding the records will be diverted to the department's detriment

Invalid Circumstances:

- The operation has not been allocated sufficient resources
- Long term or systemic problems
- Vacations
- Office processes (e.g., sign-off)
- Personal commitments
- Pre-planned events (e.g., retirements)
- Previous s. 9(1) extension taken and no work done on file
- Type of applicant (media, political, etc.)

Other Relevant Information:

- The public body made attempts to correct a mistake in processing the request
- The public body communicated with the applicant
- The public body made a phased release
- The public body provided reasonable release dates
- The public body waived fees

(3) SECTION 9(1)(c) – CONSULTATION REQUIRED

Section 9(1)(c) applies when more time is needed to consult with a third party or other public body before the public body can decide whether or not to give the applicant access to a requested record. Note that “third party” and “other public body” do not include programs or branches within the same public body. The implication is that consultation is done for the purpose of deciding whether or not to give access. Because of s. 22(3) the time limit set out in s. 7(2) continues to apply even when third party notice is required but that time may be extended pursuant to s. 9.

Test: The public body needs to explain why it is necessary to consult with a third party or other public body in order to make a decision about access, including how the third party or other public body is expected to assist. Also, the public body needs to explain why it needs more time to do this.

Some valid reasons for consulting:

- Third party or other public body has an interest in the records
- Records created or controlled jointly
- The public body must give third party notice pursuant to s. 22.

Other Relevant Information:

- When did public body initiate consultation?
- Explanation for any delay in initiating consultations
- Number of consultations required
- Number of pages sent for consultation
- Availability of third party or public body contacts
- Did public body set deadline expectations for third party or other public body?
- Is time required for consultation reasonable?
- Has the public body followed up on consultation request?
- Has the public body proceeded with a phased release?

Invalid Circumstances:

- Consultations with staff in same public body, e.g., legal counsel or program area
- Consultations for a purpose other than deciding whether to give access

Notice: These guidelines are for information only and do not constitute a decision or finding by the Information and Privacy Commissioner for Nova Scotia with respect to any matter within her jurisdiction. These guidelines do not affect the powers, duties or functions of the Information and Privacy Commissioner regarding any complaint, investigation or other matter under or connected with the Information and Privacy Commissioner’s jurisdiction, respecting which the Information and Privacy Commissioner will keep an open mind.

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