# File: 292-40/[REQUESTNUMBER]

[TODAYDATE]

[RFNAME] [RLNAME]

[STREET1]

[STREET2]

[CITY] [STATE/PROVINCESHORT] [ZIP/POSTALCODE]

Dear [RFNAME] [RLNAME]:

# Re: Request for Access to Records

# *Freedom of Information and Protection of Privacy Act* (FOIPPA)

The Ministry of Children and Family Development received your request for access to your personal information on [RECEIVEDDATE]. We understand your request to be for your young offender records and *[REQUESTDESCRIPTION]*. We are proceeding with your request for access to your own information, and you may find that your own records contain most of the information you are seeking.

With respect to your request for your young offender records, please be advised that these records fall under the *Youth Criminal Justice Act*. As such, Information Access Operations (IAO) has no authority to release these records under FOIPPA or the *Child, Family and Community Service Act*. We have forwarded your request to the Manager of the Ministry’s Document Disclosure and Management team, (Phone: 778 698-3400, Fax: 250 953-4815) for direct response.

You have also requested personal information about other people. Depending on the ages and capability of these people, we require various documents. Please complete the enclosed clarification checklist regarding accessing the records of others and return to our office as soon as possible. Please note: if you are requesting access to the information of another person over the age of 12, you should not witness their signature; *please ensure the Authorization is witnessed by a non-related adult and someone other than yourself.* If we receive the completed documents by the date below, we will review them and determine as to whether you qualify to receive the Choose records.

We will not begin processing your request for access to the personal information of your Choose, until you provide the appropriate documentation requested on the enclosed checklist**. If we have not received the required documents by** October 27, 2011Date **we will continue to process this request for your own information only. Documents received in our office late or incomplete will not be considered for this request.**

**With respect to your own information:** FOIPPA allows 30 business days for public bodies to respond unless the nature of the request requires an extension per section 10 of FOIPPA. We will make every effort to respond to your request by **[DUEDATE]**. We will notify you as soon as possible if there is a need to extend the time limit for responding to your request.

Please note all correspondence from our office will be sent to you at the Institution Name. In order to protect the security of your personal information, it is our policy to send all correspondence directly to you, the applicant, and not to a third party's address.

As we cannot guarantee that your mail will be forwarded to a new address, should you be transferred to another correctional facility or be released prior to receiving your records, please write to our office at the address below and include your new address, your full name, date of birth, CS number, and the file number located at the top of this letter.

If you have any questions regarding your request, please contact [PRIMARYUSERNAME], the analyst assigned to your request, at [PRIMARYUSERPHONE]. This number can also be reached toll-free at 1 833 283-8200. Please provide the file number at the top right of this letter in any communications.

Sincerely,

[PRIMARYUSERNAME], [PRIMARYUSERTITLE]

Information Access Operations

Enclosure(s)

cc: Manager, Document Disclosure and Management

Ministry of Children and Family Development

PO Box 9714 STN PROV GOVT Victoria BC V8W 9S1

**FREQUENTLY ASKED QUESTIONS**

**How to Access the Records of Children or Incapable Adults**

**IAO**: Information Access Operations

**MCFD**: Ministry of Children and Family Development

**FOIPPA**: *Freedom of Information and Protection of Privacy Act*

**FOIPP Regulation**: *Freedom of Information and Protection of Privacy Regulation*

**CFCSA***: Child, Family and Community Service Act*

**FLA**: Family Law Act

1. If my child is in the care of the MCFD, can I request access to his/her personal information?

If a child under 12 years of age is currently in the custody of the MCFD, you are not entitled to access to his or her personal information: see section 76(1) of the CFCSA. You may re-apply for access once the child is returned to your legal care.

1. Why do I need to provide the most current FLA court order or agreement to obtain my child’s records?

Section 5 of the FOIPPA, section 3 of the FOIPPA Regulation and section 76 of the CFCSA states that in order for one to exercise the right of a child under 12 years of age to access their personal information, one must meet two requirements:

* 1. that one is a person legally entitled to access the child’s information; and
  2. that one is acting on behalf of the child

If you are a guardian of your child as defined in sec 39 of the FLA and you have parenting responsibilities for your child as defined in sec 40 of the FLA then providing the most current FLA court order or agreement will satisfy Part 1 of the FOIPPA Regulation, section 3 requirements.

1. What if I don’t have an FLA court order or agreement? Can I still obtain my child’s records?

Yes. Section 40 of the FLA states that unless a court order or agreement allocates guardianship and parental responsibilities differently, each child’s guardian may exercise all parental responsibilities with respect to the child, in consultation with the child’s other guardians unless consultation would be unreasonable or inappropriate in the circumstances.

1. Why do I have to explain why I want my child’s records?

Section 5 of the FOIPPA, section 3 of the FOIPP Regulation, and section 76 of the CFCSA indicate that a request for access to a child’s personal information ***must be made on the child’s behalf***. The rationale for requiring applicants to indicate how they are acting on behalf of the child is based on previous decisions of the Information and Privacy Commissioner, which have decided that an individual claiming to exercise the right of access to a record on behalf of another is required to be truly acting "on behalf of" that other person as opposed to acting in their own personal interests*.*

1. What if I want the records for a Family Court matter?

When a parent or other applicant indicates they require access to a child’s records for a court matter related to guardianship or parenting arrangements, the Ministry has been unable to conclude that the applicant is acting “on behalf” of the child for the purposes of section 5 of the FOIPPA, section 3 of the FOIPP Regulation, and section 76 of the CFCSA.

When IAO denies a parent or other applicant access to a child’s information because the applicant does not meet the legislative requirements for an access to information request, this does not close the door to the Court obtaining access to this information if needed to make a decision**.** Any party to a proceeding under the *Family Law Act* has the option of applying to the court for access to MCFD records for the purposes of a proceeding under that Act. However, that judicial process is completely separate from the access to information process under FOIPPA.

1. Why do I have to obtain the consent of my child who is over 12 years of age?

The CFCSA recognizes the right of a child 12 years and over to act on his or her own behalf unless he or she is incapable.

1. How do I get access to the personal information of my incapable child over 12 but under 19 years?

If a child is over 12, but under the age of 19 years, and is unable to understand and provide informed written consent, you will need to establish eligibility to act for an incapable minor under s. 76 of the CFCSA, section 5 of FOIPPA and section 3 of the FOIPPA Regulations. You will need to complete the Guardian Declaration form.

1. How do I access the information of an incapable adult 19 years or over?

If an adult over 19 is unable to understand and provide informed written consent, you will need to establish eligibility to act for the person under section 4 of the Freedom of Information and Protection of Privacy Regulation (see text box). You will need to provide a copy of your documentation (e.g. Representation Agreement) to enable IAO to proceed with your request.

**From the *Freedom of Information and Protection of Privacy Regulation***

**Who may act for an adult**

**4** (1) In this section, “representative” means any of the following persons:

1. A committee appointed under the Patients Property Act;
2. A person acting under a power of attorney;
3. A litigation guardian;
4. A representation acting under a representation agreement, as defined in the Representation Agreement Act.

(2) A representative of an adult may act for the adult in relation to any of the following sections   
 of the Act:

1. Section 5;
2. Section 10 (1) (d);
3. Section 26 (d);
4. Section 27 (1) (a) (i);
5. Section 29 (1);
6. Section 30.1 (a);
7. Section 32 (b);
8. Section 33.1 (1) (b).
9. A representative of an adult may exercise a power granted to the representative under subsection (2) of this section only if the power is within the scope of the representative’s duties or powers.

[Type a quote from the document or the summary of an interesting point. You can position the text box anywhere in the document. Use the Text Box Tools tab to change the formatting of the pull quote text box.]

**If you have any questions about the above, please contact IAO**

**Email:**

[**FOI.requests@gov.bc.ca**](mailto:FOI.requests@gov.bc.ca)

**Mail:**

**Information Access Operations**

**PO Box 9569 Stn Prov Gov Victoria BC V8W 9K1**

**Toll Free:**

**1 833 283-8200**

***Freedom of Information and Protection of Privacy Act***

**How to make a request**

**5** (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.

***Freedom of Information and Protection of Privacy Regulation***

**Who may act for a minor**

**3** (1)  A guardian of a minor may act for the minor in relation to any of the following sections of the Act if the minor is incapable of acting under that section:

(a) section 5;

(b) section 10 (1) (d);

(c) section 26 (d);

(d) section 27 (1) (a) (i);

(e) section 29 (1);

(f) section 30.1 (a);

(g) section 32 (b);

(h) section 33.1 (1) (b).

(2)  A guardian of a minor may exercise a power granted to the guardian under subsection (1) of this section only if the power is within the scope of the guardian's duties or powers.

**Who may act for an adult**

**4** (1) In this section, "representative" means any of the following persons:

(a) a committee appointed under the [*Patients Property Act*](http://www.bclaws.ca/civix/document/id/complete/statreg/96349_01);

(b) a person acting under a power of attorney;

(c) a litigation guardian;

(d) a representative acting under a representation agreement, as defined in the [*Representation Agreement Act*](http://www.bclaws.ca/civix/document/id/complete/statreg/96405_01).

(2) A representative of an adult may act for the adult in relation to any of the following sections of the Act:

(a) section 5;

(b) section 10 (1) (d);

(c) section 26 (d);

(d) section 27 (1) (a) (i);

(e) section 29 (1);

(f) section 30.1 (a);

(g) section 32 (b);

(h) section 33.1 (1) (b).

(3) A representative of an adult may exercise a power granted to the representative under subsection (2) of this section only if the power is within the scope of the representative's duties or powers.

***Child, Family and Community Service Act***

#### Who can act for a child

**76**  (1) A person, other than a director, who has legal care of a child under 12 years of age may, on behalf of the child, exercise the child's rights under the Freedom of Information and Protection of Privacy Act

(a) to be given access to information about the child in a record,

(b) to consent to the disclosure of that information, and

(c) to request the correction of that information.

(2) A person, other than a director, who has legal care of a child 12 years of age or older may, on behalf of the child, exercise the child's rights under the Freedom of Information and Protection of Privacy Act

(a) to be given access to information about the child in a record,

(b) to consent to the disclosure of that information, and

(c) to request correction of that information if the child is incapable of exercising those rights.