# File: 292-40/[REQUESTNUMBER]

[TODAYDATE]

Sent via email: [RQREMAIL]

[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 Choose insert named third party on [RECEIVEDDATE]. In order to proceed with your request, we require clarification / additional information. Please complete the enclosed form(s) and return to our office as soon as possible along with any additional documentation requested on the form. 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.* The Authorization is to be completed by the individual consenting to the disclosure of their records.

Until the information and/or required documents requested on the enclosed form are received by our office, we are unable to proceed with your request. We will keep your request as pending until we receive clarification from you. If we receive the completed documents by the date below, we will review them and determine as to whether you qualify to receive the records. Due to the COVID 19 pandemic, we would appreciate you sending the documents electronically (email or fax).

**If we have not received the required document(s) and/or information before** Date, **we will consider your request to have been abandoned and will close your file without further notice. Documents received late or incomplete will not be considered for this request.**

Delete if request was submitted online:

You submitted your request outside of our online process. For future reference, you can submit both personal and general requests at: <https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information>. Using the online process is a fast, easy and secure way to submit your Freedom of Information (FOI) request. It also ensures that we receive the information required to open your request. The webpage also includes frequently asked questions, additional information regarding the FOI process, and links to previously completed FOI requests and proactively released government records.

If you have any questions, please contact me at [PRIMARYUSERPHONE]. This number can also be reached toll-free at 1 833 283-8200. Out-of-province callers will need to dial long distance. Please provide the FOI request number, found at the top right of the first page of this letter, in any communications. If you find you no longer require the requested records, please advise our office as soon as possible.

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

[PRIMARYUSERNAME], [PRIMARYUSERTITLE]

Information Access Operations

Enclosure(s)

Delete the title of the FAQ and the FAQ itself, if it is not being enclosed (enclose both if you don’t know the age of the applicant or the age of the 3rd party and only enlose the first one if applicant is seeking records of a child under 19 or have specified seeking records of an incapable adult)

FAQ – Accessing the Records of Children and Incapable Adults

FAQ – Informed Consent – Accessing the Records of a Person Age 12 Years and Older

**FREQUENTLY ASKED QUESTIONS**

**Accessing the Records of Children or Incapable Adults**

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

**IAO**: [Information Access Operations](https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information)

**MCFD**: [Ministry of Children and Family Development](https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/children-and-family-development)

**FOIPPA**: [*Freedom of Information and Protection of Privacy Act*](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00)

**FOIPP Regulation**: [*Freedom of Information and Protection of Privacy Regulation*](http://www.bclaws.ca/civix/document/id/loo93/loo93/155_2012)

**CFCSA***:* [*Child, Family and Community Service Act*](http://www.bclaws.ca/Recon/document/ID/freeside/00_96046_01)

**FLA**: [*Family Law Act*](http://www.bclaws.ca/civix/document/id/lc/statreg/11025_01)

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 section 3 of the FOIPPA Regulation.

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 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 FLAhas 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 the 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 section 76 of the CFCSA, section 5 of the FOIPPA and section 3 of the FOIPP 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 FOIPP 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**

**Phone:**

**250 387-1321**

**FREQUENTLY ASKED QUESTIONS**

**Accessing Records of Another Person 12 Years of Age or Older and**

**Informed Consent**

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

1. What does informed consent mean and why is it required?

The *Freedom of Information and Protection of Privacy Act* (FOIPPA) Policy and Procedures Manual, in the context of Sections 32, 33 and 33.1 (1)(b), deals with consent to the use and disclosure of personal information. The concept of “informed consent” involves ensuring that a person who authorizes the release of their personal information fully understands the nature of the personal information to be disclosed. Informed consent is required so Information Access Operations (IAO) can determine if the above conditions have been met. IAO’s Authorization for Release of Records form describes in detail the types of personal records held by the Ministry enabling individuals to indicate specifically which personal records the Ministry is authorized to disclose.

FOIPP Policy Interpretation:

1. A public body must ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1, 33.2 or 33.3.
2. Section 33.1(1)(b) provides that a public body may disclose personal information if the individual whose information is being requested consents to the disclosure.
3. **Any** [**consent**](http://www.cio.gov.bc.ca/cio/priv_leg/manual/definitions/def.page?#consent) **by an individual must be an informed consent, which must include informing the individual of:**
   1. **the exact nature and extent of personal information held by the public body about the individual; and**
   2. **the proposed disclosure of the personal information.**
4. The absence of consent shall be interpreted as the absence of authorization. Where the person concerned has not consented to a disclosure of the personal information, public bodies cannot assume consent to the disclosure.

2. What other options are available?

* A court order for production of records held by the Ministry can be sought.
* The third party’s representing counsel can submit a request on behalf of their client for the requested records with a signed Authorization for Release of Records form.

3. Are there other requirements for a consent to be considered valid under FOIPPA?

Where an individual is seeking a third party adult’s personal information and is relying on a consent form for that purpose, section 11 of the FOIPPA Regulation applies with respect to the adequacy of the consent form itself.  
  
**FOIPPA Regulation 11:**    
(1)  For the purposes of section 26 (d), 30.1 (a), 32 (b) and 33.1 (1) (b) of the Act, consent must

(a) be in writing

(b) be done in a manner that specifies

(i)  the personal information for which the individual is providing consent, and

(ii) the date on which the consent is effective and, if applicable, the date on which the consent expires.

A consent must also:

1. Clearly identify the individual providing the consent (Full Name and Date of Birth);
2. Be signed by the individual and be dated within the last 6 months;
3. Accurately state to whom the personal information may be disclosed;
4. Specify how the personal information may be used; and
5. State the jurisdiction (provincially or internationally) to which the personal information will be disclosed (if applicable).

# How to Request a Review with the

# Office of the Information and Privacy Commissioner

If you have any questions regarding your request please contact the analyst assigned to your file. The analyst’s name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

**Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:**

Information and Privacy Commissioner

PO Box 9038 Stn Prov Govt

4th Floor, 947 Fort Street

Victoria BC V8W 9A4

Telephone 250 387-5629 Fax 250 387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.