# File: 292-40/[REQUESTNUMBER]

Your File: [CUSTOMFIELD60]

# [TODAYDATE]

Sent via email: [RQREMAIL]

[ADDRESS]

Dear [RFNAME] [RLNAME]:

**Re: Request for Access to Records**

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

Client: [ONBEHALFOF]

The Ministry of Attorney General received your request for access to personal information on [RECEIVEDDATE]. As per our conversation on Date we We understand your request to be for a copy of *[REQUESTDESCRIPTION]*, together with the personal information of your Choose, [ONBEHALFOF], deceased.

Before the Ministry can release any records relating to your deceased Choose, it must determine whether it has the authority to do so under FOIPPA. The personal information of deceased persons is protected by British Columbia’s privacy legislation. Previous orders issued by the Information Privacy Commissioner have stated a person’s right to privacy survives death. Regulation 5(1) of FOIPPA stipulates who may act for a deceased individual.

For regulation 5(1) to apply, you must be acting on behalf of your Choose, and be the nearest relative or personal representative. Applicants seeking records for their own personal interests, and not on behalf of the deceased, cannot exercise the deceased’s right of access to records under section 5(1).

For your reference, please find enclosed a copy of regulation 5 and sections 5 and 22 of FOIPPA. Section 22 details what personal information, if disclosed, would reasonable invade someone’s personal privacy.

Any person applying to access the records of a deceased adult must provide the following documentation:

1. A written statement regarding your eligibility to make the request, as per section 5(1) of FOIPPA. Please confirm that there was no committee acting for your Choose prior to their death and that you are your Choose personal representative. If neither of these apply in the circumstances, please confirm you are your Choose nearest adult relative, as per the definition in section 5(1)(b)(iii); and
2. A written statement regarding ways in which you are acting for, or on behalf of, your deceased Choose in making the request (as opposed to acting on your own behalf, or in your own interests). For example, if a personal representative is settling the estate of the deceased, the personal representative would describe how access to the personal information of the deceased will assist in settling the estate; and

Delete if a copy of the death certificate has been provided with the request

1. A copy of your Choose death certificate.

We will not begin processing your request for access to your Choose personal information until you provide the documents requested above. If we have not received the required documents by Date, Choose.

Please note: in the event you do not meet the requirements for access to your Choose personal information, and you believe the records of your child may contain information you need, you may wish to make a new application for access to the personal information of your child. I have enclosed a Guardian Declaration and Authorization for Release of Records form, together with information regarding the different requirements for access to the records of children. You are welcome to call me at [PRIMARYUSERPHONE] with any questions about the various eligibility requirements.

**Option 1: Identity verified**

Records located in response to your request(s) will be delivered through the BC Secure File Transfer Service (SFTS) (subject to limited exemptions). This service provides a quick, easy and secure way of delivering and accessing records. A guide for using the SFTS is enclosed for your convenience.

**Option 2: Identity not verified**

Information Access Operations (IAO) is now able to deliver the response to your FOI request using your email address. IAO is using a Secure File Transfer Service to allow us to deliver FOI response packages to applicants in the most secure and efficient way possible. In the past, you may have been required to travel to a government office to verify your identification and pick up your package but this is no longer necessary, as our new service will allow you to verify your identity online.

You are able to use this service if you have a Photo BC Services Card or a BC Driver’s Licence and Services Card (<https://www2.gov.bc.ca/gov/content/governments/government-id/bc-services-card/types-of-cards>) **and** an email address.

If you wish to verify your identity for your existing FOI request, please submit the required information through our online personal FOI request form (<https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information/personal-information-request>). If you experience difficulties accessing the link try a different browser such as Chrome, Firefox or Safari (on Apple product). Follow these instructions:

* Choose to submit a new personal request
* Choose login with BC Services Card
* In the description of records box, enter the following: **"ID verification for FOI Request [enter your existing request #]"**
  + By entering your existing FOI request number (see email subject line), we will be able to link the verification to your existing request

Once you have completed this process **and** a response to your FOI request is complete, you will receive an email with instructions and a link to download your records. A guide for using the SFTS is enclosed for your convenience.

For all future personal FOI requests, we recommend using our online form and the BC Services Card identity verification process.

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.

Option 1: In Province Records Delivery Requested

If your records are not sent to you via SFTS, they will be sent to the Ministry District Office nearest to your address. When your records are ready to be released, Information Access Operations (IAO) will contact you in writing with details regarding the location and contact information of the Ministry District Office where you may pickup your records. Please be prepared to produce two pieces of identification when picking up your records.

|  |  |
| --- | --- |
| **Primary ID** | **Secondary ID** |
|  |  |
| * Provincial Identification | * Birth Certificate |
| * Valid Driver's License * Passport | * Provincial Health Card * Credit Card |
| * Citizenship Card * Permanent Resident Card | * Citizenship Papers * Immigration Documents |
| * Secure Certificate of Indian Status card, issued by the Government of Canada |  |

Option 2: Out of Province Records Delivery Requested

Your records will be sent by mail using Purolator and will be held for your pick up at the Purolator office nearest to your address. You will receive notification by telephone from the Purolator office advising you that your package has arrived. You must attend the Purolator office where you will be required to show current identification and sign for the package to receive your records.

Option 3: Out of Country Records Delivery

When your records are ready to be released to you, they will be sent to you by mail. We require that applicants who live outside of Canada provide us with legible copies of two pieces of identification in advance of our mailing the records. The first piece must be from the “primary” list and the second from the “primary or secondary” list.

|  |  |
| --- | --- |
| **Primary ID** | **Secondary ID** |
|  |  |
| * Provincial Identification | * Birth Certificate |
| * Passport | * Provincial Health Card |
| * Original Citizenship Papers | * Citizenship Papers |
| * Immigration Documents | * Credit Card |
| * Valid Driver's License |  |
| * Secure Certificate of Indian Status card, issued by the Government of Canada |  |

Please forward to us legible copies of identification by [DATE]. If we do not receive the copies of your identification by this date, we will close your request without further contact.

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 be advised that all correspondence will be sent to the address you provided. Should your address change or you determine that you no longer require the requested records, please advise this office at your earliest convenience.

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. 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.

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

Enclosures

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 for British Columbia

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.

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

**5 How to make a request**

(1) To obtain access to a record, the applicant must make a written request that

(a) provides enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the record 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.

**22 Disclosure harmful to personal privacy**

(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of Indigenous peoples,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment, occupational or educational history,

(e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

(h) the disclosure would reveal

(i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or

(ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party,

(i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or

(j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,

(c) an enactment of British Columbia or Canada authorizes the disclosure,

(d) the disclosure is for a research or statistical purpose and is in accordance with section 33 (3) (h),

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

(g) public access to the information is provided under the [*Financial Information Act*](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96140_01),

(h) the information is about expenses incurred by the third party while travelling at the expense of a public body,

(i) the disclosure, in respect of

(i) a licence, a permit or any other similar discretionary benefit, or

(ii) a degree, a diploma or a certificate,

reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):

(iii) the name of the third party to whom the item applies;

(iv) what the item grants or confers on the third party or authorizes the third party to do;

(v) the status of the item;

(vi) the date the item was conferred or granted;

(vii) the period of time the item is valid;

(viii) the date the item expires, or

(j) the disclosure, in respect of a discretionary benefit of a financial nature granted to a third party by a public body, not including personal information referred to in subsection (3) (c), reveals any of the following with respect to the benefit:

(i) the name of the third party to whom the benefit applies;

(ii) what the benefit grants to the third party;

(iii) the date the benefit was granted;

(iv) the period of time the benefit is valid;

(v) the date the benefit ceases.

(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

(a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or

(b) with respect to subsection (3) (h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

(6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).

***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:

(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.

**Who may act for a deceased individual**

**5** (1) In this section:

**"appropriate person"** means,

(a) in respect of a deceased adult, one of the following:

(i) a committee acting under section 24 of the *Patients Property Act* for the deceased;

(ii) if there is no committee acting for the deceased, the personal representative of the deceased;

(iii) if there is no committee acting for the deceased and no personal representative of the deceased, the nearest relative of the deceased, and

(b) in respect of a deceased minor, one of the following:

(i) the personal representative of the deceased;

(ii) if there is no personal representative of the deceased, a guardian of the deceased immediately before the date of death;

(iii) if there is no personal representative or guardian of the deceased, the nearest relative of the deceased;

**"nearest relative"** means the first person referred to in the following list who is willing and able to act under subsection (2) of this section for a deceased individual:

(a) spouse of the deceased at the time of death;

(b) adult child of the deceased;

(c) parent of the deceased;

(d) adult brother or sister of the deceased;

(e) other adult relation of the deceased other than by marriage;

(f) an adult immediately related to the deceased by marriage;

**"spouse"** means a person who

(a) is married to another person and is not living separate and apart, within the meaning of the *Divorce Act (Canada)*, from the other person, or

(b) is living with another person in a marriage-like relationship for a continuous period of at least one year immediately before the death of the other person.

(2) If an individual is deceased, an appropriate person may act for the deceased 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) If a nearest relative who is acting under this section ceases to be willing or able to act, the right to act under subsection (2) of this section passes to the person who is next in the definition of "nearest relative" and who is willing and able to act.

(4) If the right to act under subsection (2) of this section passes to persons of equal rank in the listed order in the definition of "nearest relative", the right passes to the person who is the eldest of the persons and descends in order of age to the next person who is willing and able to act.

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