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)

I am writing further to our letter of Date, and the Guardian Declaration(s) received by our office on Date.

**Option: Advise proceeding with own records (and possibly others over 12 if requested and consent(s) received. If not, delete this paragraph.**

We are proceeding with your request for access to your own information and the information of your Choose. You may find that these records contain much of the information you are seeking. Please refer to our previous correspondence for details.

**With respect to the records of your** Choose **Name(s), DOB(s)**: section 5 of FOIPPA, section 3 of FOIPPA Regulation and section 76 of the *Child, Family and Community Service Act* (CFCSA) apply. An applicant requesting access to the records of a child under the age of 12 years must provide supporting information that meets both eligibility requirements noted below.

1. Provides written proof that the **applicant is authorized to make the request**, and
2. Demonstrates how the **applicant** **is** **acting for or on behalf of the child**.

**Options for first requirement:**

Regarding the first requirement: you declared in the Guardian Declaration(s) that you are a legal guardian of the Choose, in accordance with section 39 of the *Family Law Act*. You also provided a Choose dated Date**,** indicating that you are currently [describe custody parameters as detailed in the supplied documentation pertaining to custody/access - e.g. **one of the legal guardians sharing guardianship and parenting responsibilities with NAME].** Please note, section 40 of the *Family Law Act* (attached) states that unless a court order or written agreement allocates guardianship and parental responsibilities differently, each child’s guardian should exercise all parental responsibilities with respect to the child, in consultation with the child’s other guardian(s) unless consultation would be unreasonable or inappropriate in the circumstances.

**OR**: Regarding the first requirement: you have not provided a copy of a court order or written agreement regarding guardianship and parenting responsibilities for the Choose. By signing the Guardian Declaration(s), you have declared that you are currently a legal guardian of the Choose. Please note, section 40 of the *Family Law Act* (attached) states that unless a court order or written agreement allocates guardianship and parental responsibilities differently, each child’s guardian should exercise all parental responsibilities with respect to the child, in consultation with the child’s other guardian(s) unless consultation would be unreasonable or inappropriate in the circumstances.

**OR: avoid part 1 entirely when there is a threat of violence etc. from other parent**

**Choose the appropriate denial paragraph below and DELETE the others:**

Option 1: Part II - requirement not met - no information provided

We are unable to establish that you meet the second eligibility requirement, as there is no indication of how you are acting on behalf of the Choose.

Nor is there information as to how your access to the Choose’s personal information would be used to further the Choose’s interests at this time.

Option 2: Part II – requirement not met - information provided but nothing concrete

We are unable to establish that you meet the second of the eligibility requirements. You indicated you are making your request for access to the Choose’s information in order to *[describe noted situation/use applicant’s own wording – e.g. access to my child, for safety concerns, uphold a restraining order etc.]*. However, this does not demonstrate how you are acting on behalf of your Choose in the sense of providing concrete ways in which your access to the Choose’s personal information would be used to further his or her interests at this time. **If you have child protection concerns regarding the care of your** Choose**, the most appropriate avenue to take these concerns is the Ministry**.

Option 3: Part II – requirement not met – information indicates using records for access/custody Court proceeding

We are unable to establish that you meet the second part of the eligibility requirements. You indicated you are making your request for access to the Choose’s information in order to *[describe noted situation/use applicant’s own wording – e.g. access to your child etc.]* Determining whether someone is acting on behalf of a child when it comes to custody or access issues is in effect attempting to determine who makes the more appropriate care giver or guardian of the child. While such a determination would ultimately be in the best interests of the Choose, the appropriate venue for this determination is the Courts. **If you have child protection concerns regarding the care of your** Choose**, the most appropriate avenue to take these concerns is the Ministry.**

Therefore, we are declining to provide access to your Choose’s personal information on the basis that the requirements of section 5 of FOIPPA and section 76 of CFCSA, as they relate to who can act for a child, have not been met.

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.

Please also be advised, when a person does not meet the eligibility requirements related to acting on behalf of a child for the purpose of access to personal information, we have to consider the request as equivalent to any person requesting access to the personal information of a third party. Records related to children’s involvement with the Ministry are of a highly sensitive and personal nature, often including confidential interviews of children. Therefore, the records you have requested related to your Choose are also excepted from disclosure under section 22 of FOIPPA (Disclosure harmful to personal privacy). FOIPPA requires us to withhold third party personal information.

If your request is related to a matter before the Court, and a judge deems it necessary to see records from the Ministry of Children and Family Development to determine the best interests of a child, they can order disclosure of the relevant records directly from the Ministry. This is separate from the access to information process under FOIPPA*.*

**Choose the appropriate closing paragraph below and DELETE the other:**

Option 1: Part II requirement not met – own information not requested – close file

As you have not requested access to your own information or you have already received your own information, and you have not established your eligibility at this time to obtain access to your Choose’s personal information from records held by the Ministry of Children and Family Development, this file is now closed.

Option 2: Part II requirement not met – own information requested – processing

When your records are ready to be released Choose [delete next Reminder sentence if SFTS is being used to deliver records] Reminder: You will need to present two pieces of identification at that time to receive your records. Please refer to instructions previously sent.

**Choose the appropriate contact us paragraph below and DELETE the other:**

Option 1: If closing file

Should 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.

Option 2: If processing for own information

If your address or telephone number changes, or you have any questions, please contact me at the mailing address on the bottom of the first page, or [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.

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

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.

***Family Law Act***

**39 Parents are generally guardians**

(1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

(2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.

(3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:

(a) section 30 *[parentage if other arrangement]* applies and the person is a parent under that section;

(b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;

(c) the parent regularly cares for the child.

(4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship.

**40 Parenting arrangements**

(1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

(2) Unless an agreement or order allocates 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.

(3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by

(a) one or more guardians only, or

(b) each guardian acting separately or all guardians acting together.

(4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:

(a) that parental responsibilities should be allocated equally among guardians;

(b) that parenting time should be shared equally among guardians;

(c) that decisions among guardians should be made separately or together.

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

**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).