

Processing an FOI Request under Ontario's FIPPA or MFIPPA

Version 1.04
Published March 17, 2021

Presented by:



Freedom Of Information Software For Ontario's Provincial and Municipal Institutions

foiassist.ca

Definitions:

FIPPA means the Ontario Freedom of Information and Protection of Privacy Act.

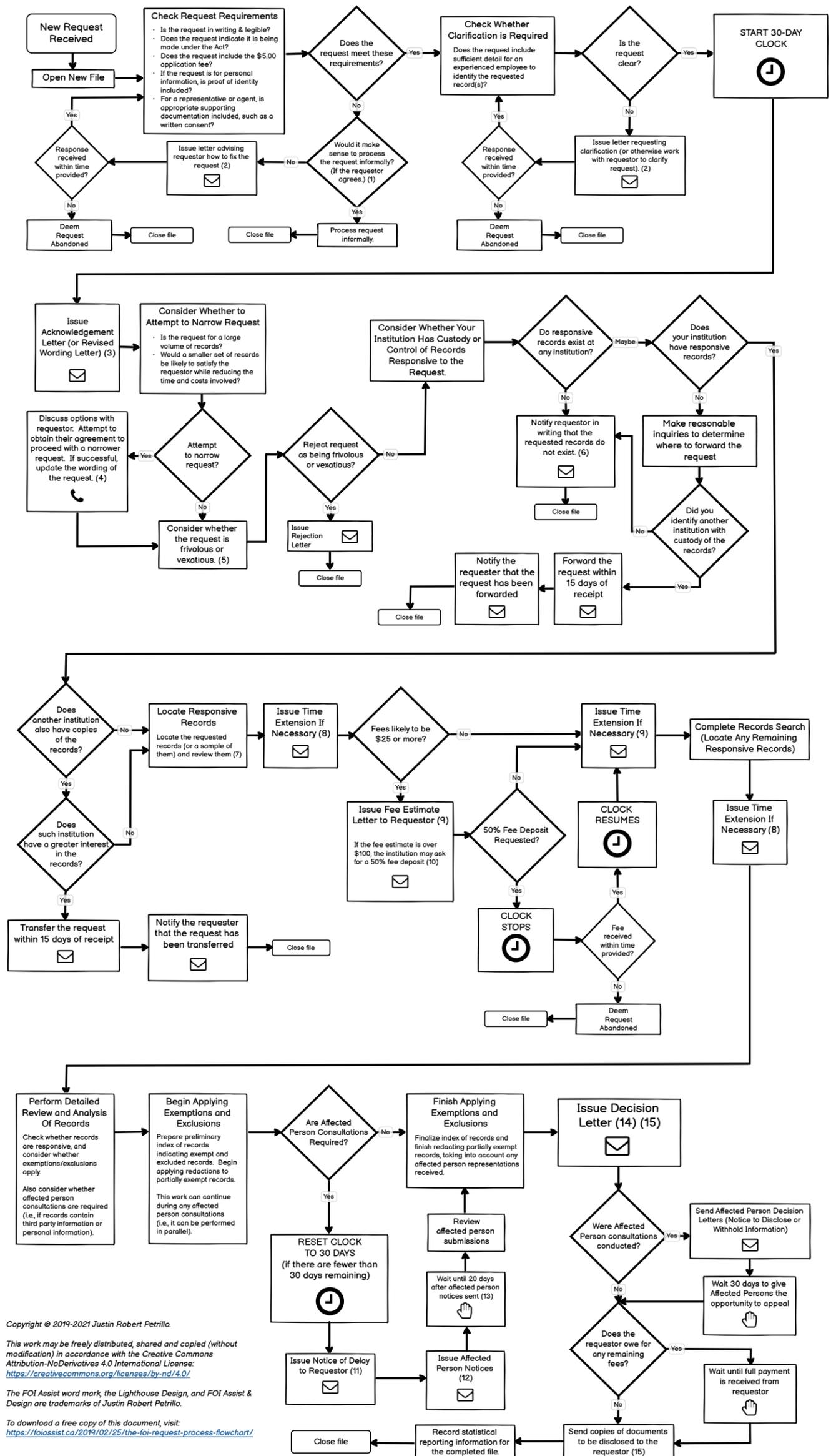
FIPPA Manual means the Ontario Ministry of Government and Consumer Services' Freedom of Information and Protection of Privacy Manual published March 2018.

Institution means a provincial or municipal institution in Ontario to which FIPPA or MFIPPA applies.

MFIPPA means the Ontario Municipal Freedom of Information and Protection of Privacy Act.

Notes:

- (1) The FIPPA Manual recommends confirming the requestor's agreement to proceed informally in writing.
- (2) It is recommended to let the requestor know that if they do not respond within 30 days (general records) or 365 days (personal information requests) their file will be closed.
- (3) It is considered best practice to send the requestor a letter acknowledging receipt of their request as a courtesy. If the original request was valid, this will be the first communication back to the requestor. If the original request required clarification, then this may be an appropriate time to send a letter confirming the revised request wording to the requestor.
- (4) Since the clock is running at this point, the preferred approach is generally to call the requestor and attempt to narrow the request over the phone. It may be worthwhile to send the requestor written confirmation of any revised request wording agreed to in the call in order to avoid potential disagreement later.
- (5) A frivolous or vexatious request occurs where the request is "part of a pattern of conduct that amounts to an abuse of the right of access or where responding to the request would interfere with the operations of the institution". An institution is not required to proceed with a request that is frivolous or vexatious.
- (6) (i) Alternatively, under FIPPA s.21(5) / MFIPPA s.14(5) or FIPPA s.14(3) / MFIPPA s.8(3), an institution may in some cases prefer to refuse to confirm or deny the existence of a record when doing otherwise would constitute an unjustified invasion of privacy or compromise a law enforcement matter. (ii) The FIPPA Manual notes "[w]hen a requester sends a request to the wrong government [i.e., to the federal government, another provincial government, a municipality outside of Ontario or the government of another country], coordinators should return the request and application fee to the requester and advise them to re-submit the request to the appropriate government."
- (7) It may be necessary to identify staff in relevant program areas to conduct searches, in which case, be sure to provide such staff with clear search instructions, preferably in writing.
- (8) A time extension is permitted if the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or if consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit. Only one such "discretionary" time extension is permitted for each file. To avoid issuing unnecessary time extensions, if additional time is needed, it is generally preferable for the institution to take other steps to gain additional time (if such other steps are available), such as issuing a fee estimate and request for fee deposit, or starting the affected person notification process (if required).
- (9) The FIPPA Manual has useful templates for this -- consider using the Sample Record Search Form if estimated fee is expected to be \$25 but under \$100; if the estimated fee will be \$100 or more, consider using the Fee Estimate Form. (The FIPPA Manual directs that if the fee estimate is \$100 or more, the institution "must prepare a detailed fee estimate with an interim decision letter.")
- (10) It is recommended to let the requestor know that if they do not respond within 30 days (general records) or 365 days (personal information requests) their file will be closed.
- (11) Generally, 30 days are required for the Affected Person consultation process. If there are less than 30 days left on the clock, the deadline is reset to a full 30 days out and therefore requestor must be issued a notice to inform them of the delay.
- (12) Affected person notices often include copies of the documents that are the subject of the consultation. If affected persons are being provided copies of documents that they may not have already, such documents may need to be redacted to reflect the application of FIPPA/MFIPPA exemptions before being sent out to the affected person.
- (13) It can be a good idea to follow-up with the affected persons during these 20 days to encourage them to reply.
- (14) The decision letter should ask for payment of any fees owing before any documents are released. If affected persons were consulted, the decision letter should note that the documents will be held for 30 days to allow affected persons to appeal.
- (15) For personal information requests, some institutions may require additional proof of identification at this point before documents are disclosed to the requestor, such as personally appearing with photo ID to pick up the decision letter and/or disclosure.



Copyright © 2019-2021 Justin Robert Petrillo.

This work may be freely distributed, shared and copied (without modification) in accordance with the Creative Commons Attribution-NonDerivatives 4.0 International License: <https://creativecommons.org/licenses/by-nd/4.0/>

The FOI Assist word mark, the Lighthouse Design, and FOI Assist & Design are trademarks of Justin Robert Petrillo.

To download a free copy of this document, visit: <https://foiassist.ca/2019/02/25/the-foi-request-process-flowchart/>