

## Fact sheet: Duty to Assist

The *Access to Information Act* (ATIA) requires public bodies to make every reasonable effort to assist individuals who make a formal access to information request (formally known under the ATIA as the applicant).

### What is the duty to assist?

Section 12 establishes a duty for the head of a public body to assist applicants and to respond to each applicant openly, accurately and completely and in accordance with the regulations. Section 5 of the Access to Information Regulation outlines what factors should be considered to assess whether a public body has met its duty to assist.

### Duty to Assist

A public body's duty to assist applicants applies throughout the entire request process. Specific steps that must be taken to meet this duty are unique to each access to information request.

In accordance with the requirements under section 12(1), the most important aspects of the duty to assist are likely to arise in the course of:

- clarifying a request, if necessary;
- performing an adequate search for records; and
- responding to the applicant.

### Clarifying the request

Communication with the applicant with the goal of helping them properly identify the record they are seeking is important. Many applicants are unfamiliar with the organization and administrative practices of public bodies. They may not be aware of the process by which a public body reaches or implements a decision or policy, the kind of records that may be generated in the course of that process, and the process of disposing of the records.

Clarification of the request may involve assisting the applicant in defining the subject of the request, the specific kinds of records of interest (e.g., reports, briefings, correspondence etc.), and the time period for which records are being requested.

These clarifications may help enable the public body to locate and identify a requested record, narrow a request that is overly broad, or make an incomprehensible request comprehensible.

Clarifying a request may also mean discussing examples with the applicant of a scope that captures the records that the public body has on the topic or subject matter of the access to information request. To ensure reasonable effort, if a public body requests

further information from the applicant that is necessary to process the request, the applicant must be informed that a response with the information requested is required within 30 business days. Failure to do so may result in the request being deemed abandoned under section 10.

### Performing an adequate search

A public body must conduct an adequate search for records that are responsive to the applicant's request. To ensure an adequate record search is performed in response to a request, a public body must search all records in its custody or control regardless of location.

A public body may also have to search for responsive records under its control that are in the hands of a third-party including records in the possession of a contractor.

A search for responsive records must consider all records, as defined in the ATIA, including all electronic records that are in the custody or under the control of the public body.

### Responding to the applicant

A public body must respond to each applicant openly, accurately and completely. This includes a requirement to communicate and respond to an applicant's questions in plain language in order to ensure information is clear, concise, and easy to understand.

Details on processes and requirements related to responding to an applicant can be found in section 14 of the Act.

### Providing access to a record

A public body is required to provide access to a record including an electronic record to an applicant if providing the record:

- can be done using the public body's normal computer hardware and software and technical expertise,
- would not unreasonably interfere with the operations of the public body, and
- would be reasonable and practical.

A record is defined in section 1(u) as any electronic record or other record in any form in which information

is contained or stored, including information in any written, graphic, electronic, digital, photographic, audio or other medium, but does not include any software or other mechanism used to store or produce the record.

An electronic record is defined in section 1(f) as a record that exists at the time a request for access is made or that is routinely generated by a public body. An electronic record can be any combination of texts, graphics, data, audio, pictorial or other information represented in a digital form that is created, maintained, archived, retrieved or distributed by a computer system.

For instance, a public body may be required to provide a “push button” report (a type of report that the public body already uses, that can easily be generated in a system) to an applicant, subject to other provisions of the Act.

If a record cannot be created using the public body’s normal computer hardware and software and technical expertise, the public body is not required to create the record. The public body should work with the applicant to determine if there are any other records in the custody or control of the public body that would satisfy the applications access to information request.

## **Unreasonably Interfere**

A public body is not required to provide access to a record if providing access would unreasonably interfere with the operations of the public body. Section 5(3) of the regulation provides factors must be considered when assessing whether providing access to a record would unreasonably interfere with the operations of a public body.

Factors listed in the regulation for consideration include:

- the size of the public body;
- the number of hours required to provide the applicant with access to a record;
- the number of staff required to provide the applicant with access to a record;
- the regular duties of the staff required to provide the applicant with access to a record;

The above factors are not an exhaustive list.

## **Other factors to consider for duty to assist**

When assessing whether the head of a public body has made every reasonable effort to assist an

applicant and to respond to each applicant openly, accurately and completely the following factors should be considered:

- the size of the public body;
- the number of hours required to assist or respond to the applicant;
- the number of staff required to assist or respond to the applicant;
- the impact on the regular operations of the public body.
- the impact of providing access to a record on the operations and resources of the public body.

## **Duty to document**

A public body must create and maintain accurate records that document the public body’s decisions and actions related to the duty to assist, including the public body’s communications with applicants, reasons for time extensions, details on the search for records (e.g. who searched, what records or areas were searched etc.) and how discretion was applied to exceptions to access.

This information can be used to communicate with an applicant on the processing of their request and/or may be used during a review by the Information and Privacy Commissioner to demonstrate the public body’s decisions and steps taken in responding to a request.

## **Role of the Information and Privacy Commissioner**

The Commissioner may review actions or decision related to the processing and response to access to information requests including if the duty to assist was met by a public body.

Under section 62(2)(b) the Office of the Information and Privacy Commissioner may refuse to conduct an inquiry if the person asking for the review did not attempt to resolve the matter directly with the public body.

It is encouraged that public bodies and applicants first attempt to resolve any concerns on the processing of an access to information request including responding to questions related to the search for records prior to a formal request for review is submitted.

Where a matter is not resolved, the Information and Privacy Commissioner may conduct an inquiry and make a determination on whether the public body met its requirements under section 12 duty to assist.