Guidance for Requesting an Extension: Section 62(2)(a)(i)

# Introduction to Section 62(2)(a)(i)

Section 62(2)(a)(i) of the *Access to Information and Protection of Privacy Act* (ATIPP Act) gives the Access and Privacy Officer (APO) the ability to extend the time for a public body to respond to an access request.

# Purpose

This guidance serves two purposes:

* to communicate the criteria that is used by the Access and Privacy Officer (APO) when determining whether an extension is authorized under section 62(2)(a)(i); and
* to assist the heads of public bodies to make requests for extensions.

# Overview of Section 62(2)(a)(i)

Section 62(1) allows a public body to request additional time to respond to an access request. Section 62(2)(i) gives the APO the ability to grant the extension if the request involves a significant amount of information and the required work to provide access would unreasonably interfere with the operations of the public body. The additional time is intended to create a reasonable time frame for the public body to respond so it can maintain its other operations, which includes responding to other access requests.

## Section 62(2)(a)(i)

This section states:

*62(1) Not later than five business days before the response date for an access request, the head of a responsive public body may make a written request (with reasons) to the access and privacy officer for an extension of the time within which the head must respond to the access request.*

*(2) Not later than the third business day after receiving a request under subsection (1), the access and privacy officer may, subject to subsection (3), grant the extension if*

*a) the access and privacy officer determines that*

*(i) based on the amount of information identified as relevant to the access request, the amount of research, compilation and examination of information that would be required to be undertaken by the responsive public body to enable the head to respond to the access request by the response date would unreasonably interfere with the responsive public body’s operations.*

## Interpretation of section 62(2)(a)(i)

What is research, compilation and examination of information that would unreasonably interfere with the public body’s operations?

#### Research, compilation and examination of information

‘Research’ means finding the information; ‘compilation’ means bringing or assembling it together; and ‘examination’ means a detailed inspection and review of the information. Together, these terms can encompass some the following tasks:

* identifying the requested information;
* determining whether the requested information is held;
* searching for the requested information;
* retrieving the requested information;
* extracting the requested information;
* assembling or compiling the requested information;
* reviewing the requested information; and
* redacting information subject to exceptions to access.

#### Unreasonably interfere with the public body’s operations

The above tasks ‘unreasonably interfere’ with operations when processing this amount of information has a substantial and significant impact on the public body’s ability to carry out its other operations, including its ability to respond to other access requests.

## Framework utilized by the Access and Privacy Officer

The APO has developed a framework and methodology to exercise discretion in applying this provision. The framework includes a number of factors to consider when determining whether research, compilation and examination of information required to process a request would unreasonably interfere with the public body’s operations.

Factors:

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| **Quantity -**  **How much?** | * Amount of information requested. * Amount of information to be searched through to find what has been requested?. |
| **Time –**  **How long?** | * Length of time it will take to find the information and bring it together.   + Carrying out a sample exercise will enable the public body to make a reasonable estimate of how long it will take to complete the required tasks. |
| **Capacity –**  **Who’ll do it?** | * Resources available to do this work. |
| **Effect –**  **What’s the impact?** | * How would the diversion of these resources to complete the required tasks impact on the public body’s ability to carry out its other operations? * Relevant considerations include:   + the nature and size of the public body;   + the resources available to process access requests;   + the number of other access requests the public body has to respond to;   + the number of people capable of processing the request; and   + the other responsibilities of those people. |
| **Other factors** | * The average monthly page count the public body can reasonably administer. * The number of active access requests the public body is currently processing. * The number of access requests the public body has closed/completed from the time the request has been submitted. * Unplanned staffing issues. For example, unexpected leave of a Designated Access Officer or an unusually high number of new under trained staff. |
| **Invalid Factors** | * The operation has not been allocated sufficient resources (long term or systemic problems). * Vacations. * Office processes (e.g., sign-off). * Personal commitments. * Pre-planned events (e.g., retirements). |

## Methodology applied by the Access and Privacy Officer

A methodology for further analysis is applied to the valid factors to ensure fair and consistent application of this provision.

#### The amount of responsive information to the request

A request that is **650 or more pages** is used as a threshold to measure what a public body should reasonably be able to respond to.

Ideally the public body will provide a page count of the number of pages of responsive records. Rare exceptions may be considered if:

* A large volume of pages must be searched manually to find responsive records. In this instance the number of pages that must be searched rather than the number of pages responsive to the request may be considered.
* Search, retrieval or examination is complicated for a reason that does not relate to poor records management or program under resourcing. In this instance a sample may be used to determine the time needed.

The number of active access requests

This will determine if the public body receives extension. The public body should be resourced to process the average number of access requests it regularly receives.

Active access requests are requests that are requests that are open and not currently on hold

If the public body is granted an extension, it will also inform how many days will be granted.

For example, if Highways and Public works requests an extension for an access request that 750 pages and it has 1 other access request, Highways and Public Works is unlikely to receive a full 15-business day extension.

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| **Formula for average number of open/active access requests public body expected to be resourced to process per month:** |
| Number of ATIPP requests received by public body over past 2 fiscal years  24 months |

#### The number of closed/completed access requests during past 30 days.

This will inform whether work was completed on other requests which takes resources from this specific request.

#### Any additional factors

If the extension is granted, the applicant can then choose to challenge the APO’s decision by filing a complaint with the Office of the Information and Privacy Commissioner.