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Preliminary review of $10 FOI fee discloses mixed findings on fee's initial impact, and raises concerns over administration of the fee

VICTORIA— A preliminary review of the impact of BC's application fee for freedom of information requests reveals limited payment options, a lack of criteria among public bodies for not charging or for refunding the fee when fairness warrants, and mixed findings about the initial impact on applicants.

In November 2021, the *Freedom of Information and Protection of Privacy Act* (FIPPA) was amended to allow public bodies to charge a $10 application fee for general records requests. This fee is in addition to public bodies' existing authority to charge fees for processing access requests.

The Office of the Information and Privacy Commissioner for BC's investigation report, *Access application fee six-month review*, examined the number of access requests made to the BC Government in the first six months of the fee's implementation, from November 30, 2021 to May 30, 2022. The data was compared against the same period for the previous two years. The report also considered how the fee is administered by public bodies in BC.

The preliminary data disclosed mixed findings. Political parties made fewer requests over the three periods studied, including a substantial decline before the fee was implemented. However, it is not clear how much of this drop related to the $10 application fee, because the Official Opposition were making fewer requests even prior to the new fee, in response to existing processing charges applied by the BC Government.

Requests by individuals increased both before and after the fee was introduced.

Media submissions argued the application fee posed a barrier to requesting records. The preliminary data collected supported these submissions. Both the total number of requests and the number of unique media applicants seeking access to records fell following the implementation of the application fee.

"Although it is too soon to evaluate the long-term impact of the $10 fee on request volumes, some of the findings give cause for concern and there is a clear need to carefully monitor matters going forward," said Commissioner Michael McEvoy.

The investigation also revealed concerns around the administrative implementation of the fee.

For example, many public bodies have not developed criteria for when not to charge or to refund the fee where fairness warrants. In other cases, public bodies do not accept certain payment methods, which has the practical effect of denying access. And where fees are imposed, it is incumbent upon public bodies to properly notify applicants of this fact.

"British Columbians should not be denied timely responses to their access requests because of deficient administrative processes associated with the fee," said Commissioner McEvoy.

The report notes public bodies are not required to charge an application fee. The Commissioner discourages public bodies from charging the fee. However, should they do so, he offers five recommendations for them to follow, including:

- clearly inform applicants without delay when a fee applies;

- ensure the 30-day time limit to respond is not suspended until they have directly notified an applicant of the requirement to pay the fee;

- offer multiple fee payment options to ensure expediency and accessibility for all applicants; and

- establish a policy outlining the circumstances when they will charge or refund the fee.

The OIPC will continue to monitor the impact of the fee on the access rights for British Columbians going forward.

Full report: https://www.oipc.bc.ca/reports/investigation-and-audit-reports/
Commissioner McEvoy discusses report findings: https://youtu.be/pRHyQckx81E
Fact sheet: https://www.oipc.bc.ca/media/17490/fees-fact-sheet.pdf

Media Contact
Michelle Mitchell | Senior Communications Manager
Office of the Information and Privacy Commissioner for BC
250 217-7872 | mmitchell@oipc.bc.ca
Twitter: @BCInfoPrivacy