



TSAWWASSEN FIRST NATION
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Tsawwassen First Nation

Policy for Processing Access to Information Requests

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Table of Contents

1) Context	1
2) Accepting a formal request for access to a record	1
3) Responding to a formal request for access to a record	2
4) Responding to a formal request for access to personal information.....	3

1) Context

The Freedom of Information and Protection of Privacy Act (FIPPA) sets out that when a Tsawwassen Member or a person the chief administrative officer deems a 'qualifying person' makes a request to obtain access to a record, the chief administrative officer has 45 days to respond.

The purpose of this policy is to guide the administration's actions when processing access requests to ensure that the administration is able to handle requests efficiently and comply with the requirements set out in FIPPA.

2) Accepting a formal request for access to a record

To obtain access to a record under FIPPA, an applicant **must make requests to the chief administrative officer**. From a practical perspective, this routes all applications through his or her office. If an individual makes a request to an employee, they **must** direct that individual make their request to the chief administrative officer directly.

The Access to Information Regulation expands how an access may be made by allowing oral requests, **but it ensures all oral requests are made directly to the chief administrative officer** – it is important to direct oral requests directly to the chief administrative officer to ensure that such requests are recorded accurately and responded to in an efficient manner.

2.1 In order for a request to be considered, it **must**:

- If in writing, use the official form, be on paper or be in an email,
- If it is an oral request, be made directly to the chief administrative officer,
- Include sufficient detail to enable the chief administrative officer to identify the record, and
- If the applicant is acting on behalf of another person, it must include proof as to his or her authority to act on behalf of someone else.

If the information outlined above is not included in a request, the chief administrative officer may reject that request.

2.2 To facilitate the process, the FIPPA Regulation creates a form, which provides applicants with the information they need to accurately file a request. All managers/directors and the front desk of the administration will have copies of the form. It will also be made available on the TFN website.

If an applicant approaches a director or a manager to make a request, the director or manager should provide prospective applicants with a form and direct them to submit a complete form to the chief administrative officer.

Regardless of whether the applicant uses the prescribed form or some other written means, the applicant must pay the \$5.00 administrative fee in order for his or her request to be considered unless the request is for a record that has been identified as a record or a class of records that can be routinely disclosed.

3) Responding to a formal request for access to a record

When an access request is received, the chief administrative officer has up to 45 days to respond – although he or she may extend the time for responding provided that condition(s) outlined in section 11 [Extending the time limit for response] of FIPPA apply.

The legislated timelines are important in ensuring that Members and ‘qualifying persons’ receive a response in a timely fashion; however, this necessitates that TFN have an efficient process for collecting and collating the information and, if applicable, severing part of the information contained pertaining to a record or whether the record is releasable.

Prior to initiating this process, the chief administrative officer must first assess whether or not the applicant is entitled to part or all of the record. FIPPA provides some guidance, but also provides some discretion to the chief administrative officer.

Eligible persons include Tsawwassen Members and other persons whom the chief administrative officer determines to be directly and significantly affected by information contained in a record. If an applicant is determined to be ineligible, the chief administrative officer **must** respond to him or her indicating that the reasons access to information under FIPPA is denied.

Upon receipt of a request, the CAO must immediately create a file into which all information pertaining to the request will be kept.

The following section sets out the internal process for processing a request of an individual who is eligible.

3.1 Upon receipt of a request, the chief administrative officer will send a message to all employees and third parties that may have information pertaining to a request in their custody.

3.2 Employees or third parties that receive a request for information from the chief administrative officer must respond within 3 business days, not including the day the request was received, indicating one of the following:

3.2.1 They do not have any relevant information in their custody;

3.2.2 They have relevant information in their custody and they have it attached or have provided an estimate of the time they require to assemble the information; or

3.2.3 They are unsure whether they have any information in their custody and that they will respond definitively within 5 business days.

Based on the information provided by employees or third parties, the chief administrative officer will provide the applicant with an estimate of the costs involved in the collection, collating and reviewing of a record.

3.3 Employees and third parties that have information in their custody should organize that information and provide it to the chief administrative officer within 15 days of the initial request.

3.4 Upon receipt of the information, the chief administrator officer or a designate must review the information and may sever parts of the information if section 13 [Exceptions] of FIPPA applies.

3.5 After the information has been collected, collated and, if applicable, severed, the chief administrative officer will ensure that the Tsawwassen in-house legal counsel has signed off prior to its release.

3.6 When responding, the chief administrative officer **must** ensure that the applicant is aware that they have the right to ask for a review of the chief administrative officer's decision, actions or failure to act that relates to that request.

If access to part or all of a record was refused, the chief administrative officer must provide the reasons for the refusal.

3.7 When responding to a request, employees **must** track the number of hours they spend working on the request on their weekly timesheet. The FIPPA Regulation sets out that for every ¼ hour of work involved in a response, beyond the first 5 hours, applicants must pay TFN \$7.50.

Employees must make applicants aware of the potential costs and if costs are incurred, the chief administrative officer must invoice applicants immediately.

4) Responding to a formal request for access to personal information

For the purposes of this section a 'qualified employee' means the chief administrative officer, a manager or a director.

Tsawwassen Institutions may collect personal information from individuals provided that the information collected:

- Is expressly authorized under a Tsawwassen enactment,
- Is for the purposes of law enforcement, or
- Relates directly to and is necessary for an operating program or activity of a Tsawwassen Institution.

4.1 Every individual has the right to be given access to view and obtain a copy of personal information about that individual provided that

- the information was originally supplied by him or her, or
- the disclosure of the information is not inconsistent with the provisions of section 13 (2) [Exceptions] of FIPPA.

4.2 When making a request, an individual may make a request directly to a qualified employee, provided that the request is in writing or, in the case that the request is made orally, the request is recorded in writing by that qualified employee.

Increasing the number of points where an individual can access personal information should expedite the process of handling a request, particularly because there will be many cases where the personal information being requested is in the custody of a specific department and is in relation to a specific program.

- 4.3** In order to facilitate the granting of access to personal information, managers and directors should develop an internal list of the types or classes of personal information that were, prior to the implementation of FIPPA, routinely disclosed.

This 'routine disclosure' list must be reviewed by the chief administrative officer and, once approved, managers and directors will be able to disclose of the personal information on the list immediately with no involvement of the chief administrative officer.

- 4.4** When disclosing of the personal information, a qualified employee must provide the applicant with the option of either reviewing the information or obtaining a copy.

When a copy is requested, the qualified employee will make the copy on behalf of the applicant.

- 4.5** **If an applicant requests access to personal information that is not on the routine disclosure list, the request must immediately be forwarded to the chief administrative officer for his review.**

Whenever this occurs, the chief administrative officer must follow the process set out in sections 3.1 through 3.5 of this policy and must respond to the applicant within 45 days of the request. The chief administrative officer may extend the time limit to respond, provided that one or more of the conditions set out in section 11 [Extending the time limit for a response] of FIPPA apply.

5) Rejecting requests for access

While it is important that individuals have the right to access personal information and to records, it is important that those requests do not unreasonably interfere with the operations of a Tsawwassen Institution.

For this reason, the Executive Council has authorized the chief administrative officer to disregard requests if he or she deems the request to be:

- Repetitious or systematic in nature, or
- Frivolous or vexatious.

Other instances where all or part of a record may be withheld or where the application may be rejected are set out in:

- Section 13 [Exceptions] of FIPPA, which permits the chief administrative officer, under prescribed conditions, to sever part or all of a record or personal information, and
- The definition of a 'qualifying person' – which, as noted above provides the chief administrative officer with guidance, but also with some discretion, on determining who is eligible to access a record. It should be noted that under FIPPA, any personal information

that has been collected by Tsawwassen First Nation is accessible by that person – regardless of whether or not they are a Member.

Flow Chart for Handling Access Requests

Day 0 – Individuals asks how to make an access request to an employee. The employee will provide the individual with a copy of the request and inform them that

- a) a \$5 fee applies ,and that
- b) they must submit the form to the chief administrative officer.

The CAO must inform all employees at this point that they must carefully track the number of hours spent working on the file, as applicants may have to pay a fee – depends on the length of time involved in researching a file.

Day 1 – Access request comes in to the CAO. The CAO must assess whether the applicant is qualified to make an access request under FIPPA. If the individual is eligible, the CAO will send an email to all relevant departments or third-parties. The email request for records will make sure to tell recipients that they must respond to CAO within 3 business days.

Day 4 – Employees or third-parties that received a request from the CAO will respond to the CAO indicating whether they

- a) Have any relevant information;
- b) Do not have any relevant information; or
- c) That they are unsure and require more time to determine whether they have relevant information.

CAO will inform employees of the deadline by which time they must have submitted all relevant information to the CAO (Day 16 of the process).

At this time, the CAO must provide the applicant with an estimate of the costs associated with the request (*e.g.* expected length of time staff is required to work on the request).

Day 16 – CAO begins to review the information and he or she will enlist the support of in-house legal counsel and government services staff when reviewing and severing any part of a record.

Day 17 through 45 – The CAO must respond to a request by the 45th day. The response must include all relevant information that is not severed and must inform the applicant of their right to appeal the decision to the Judicial Council.

If the CAO requires more time, the response must clearly state the reasons he or she requires additional time.