

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff in both the district office and schools who must rely on the collective agreement in the performance of their duties.

Freedom of Information Request (CUPE)

It has come to BCPSEA's attention that a number of districts have received the attached Freedom of Information request from CUPE on January 27, 2017 which contains a two page list of questions about issues related to employment and engagement of CUPE staff. To assist districts in responding, BCPSEA has obtained general legal advice from Harris & Company with regards to districts' obligations under the Freedom of Information and Protection of Privacy Act ("FOIPPA" or "Act").

We hope the advice below is of assistance to you. While BCPSEA does not normally provide advice or direction on FOIPPA matters, CUPE's request has an obvious connection to the class size and composition discussions currently taking place with the BCTF, and we thought it appropriate to provide some general support in this area.

Districts should note this is general advice based on the obligations of FOIPPA only. It is recommended Districts review their individual collective agreements in case they have additional obligations regarding the sharing of information. If you have more specific questions or concerns, you may wish to contact legal counsel for additional advice.

General Advice:

As you are aware, the Act provides members of the public with a right to access existing records within the custody and control of each of the school districts. There is not generally a right to require a school district to create a new record in response to a request, or provide answers to specific questions, unless the school district can prepare as record efficiently from its existing electronic systems. CUPE does not have the right to require District staff to engage in research projects on its behalf.

In some cases, however, it may be faster and most efficient to simply respond to the questions that have been posed, as a response that no records exist may simply give rise to follow up requests under the Act. Which approach you take will depend on how difficult a task it is to respond to the questions.

School districts that have received this request should first consider whether the information that the applicant is seeking can be gleaned from existing records and whether any responsive records can be easily produced. You should also consider whether a response to the request can be produced from your information technology systems without unreasonably interfering with the operations of the school district.

If no records exist or can be easily produced from your systems, then you may need to consider writing to the applicant and asking him or her to identify existing records that he or she is seeking. That letter should confirm to the applicant that an access request must provide sufficient detail to allow the school district to identify the records sought.

School districts also have the right to assess a fee under section 75 of the Act. This right is available so that school districts have the ability to recoup some of their expenditures in responding to access requests. If responding to the request will consume more than three hours of time, we recommend that you do so. To charge a fee, the school district must first prepare an estimate of fees based on its anticipated costs and it may request a deposit or a commitment to pay the fee.

School districts have thirty business days within which to respond to requests for records made under the Act. If the school district issues a fee estimate, then that time period is suspended until a deposit (if requested) is received or the applicant agrees to the fee. Any records would, of course, be subject to the disclosure exemptions of the FIPPA (e.g. records which contain the personal information of special needs students).

Key Sections of the Act to Note:

- [Section 6](#) – Duty to assist applicants
- [Section 7](#) – Time limit for responding
 - If the letter was received January 27, then per the Act's definition of days (excludes Saturdays and holidays), the 30 day time limit for response will be March 3, 2017 (or later if suspended because of a fee request under section 7(4)).
- [Section 10](#) – Extending the time limit for responding
- [Section 75](#) – Fees
- [Schedule 1](#) – Schedule of Maximum Fees

The full FOIPPA Policy & Procedures Manual is available online which can assist districts in understanding their obligations under the act;

<http://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual>.

Questions

Should you require assistance or wish to discuss this further, please contact your BCPSEA liaison.

Attachments:

- Freedom of Information Request from CUPE dated Jan 27, 2017