



SPECIAL REPORT 24-01

# Review of Government's performance in responding to access requests

*April 1, 2020 to March 31, 2023*

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**oipc** OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

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# Commissioner's Message

Our system of democratic governance is underpinned by mechanisms designed to hold our public bodies to account for their actions. One of those is freedom of information legislation giving citizens a right of access to Government records - the public's records.

In British Columbia that right of access was enshrined in the *Freedom of Information and Protection of Privacy Act*, unanimously approved of by the Legislature 30 years ago.

It is of course one thing to pass a law, and another to ensure adherence to its letter and spirit.

An important aspect of adherence is the legal responsibility of Government to respond to citizens' access requests in a timely way. This report marks the ninth time my office, charged with overseeing FIPPA, has measured the timeliness of Government responses to access requests.

Two metrics in particular shed light on Government's timeliness performance. One is the percent of requests it answers within 30 days, FIPPA's benchmark for response time. The second is the number of days Government takes, on average, to respond to requests.

In the first case, Government's performance has slightly improved over the last year; but measured against the last decade it has declined considerably. As for the average number of days taken by Government to respond to access requests – that figure has jumped dramatically in the last fiscal year, reaching the highest in the 13 years since we started reporting on Government's timeliness.

Several explanations were offered for this declining performance: some understandable, others less so. The pandemic affected Government response times and indeed I provided temporary relief to public bodies from access timelines during the height of COVID-19. However, other excuses were less persuasive. Government can only cite for so long (as they have over a series of these reports) the greater complexity of files as a reason for less timely responses. To state the obvious, changes in operational demands require changes in operations to ensure compliance with statutory obligations.



Government has made some headway with its FOI modernization process, which shows some promise. Modernization measures include increasing proactive disclosures, lessening the large backlog of longstanding files, and implementing tools and procedures to increase the speed and efficiency of responding to access requests. However, much more needs to be done – particularly to deal with the serious backlog of files.

This backlog is a significant problem from the perspective of delayed responses to applicants. Additionally, in over 5,100 instances, Government had no legal authority to delay responses at all. If Government expects its citizens to act within the law, so too must it.

I have asked Government to provide me with a detailed plan on how it will respond to all those overdue requests within two years and maintain compliance with FIPPA timelines going forward. I have also asked Government to evaluate and correct any delays at the ministry level and for different applicant types.

Though this report is focused on timeliness, I would be remiss not to share some brief observations on the \$10 fee Government now charges for access requests for general records. I continue to be concerned this fee may be adversely impacting the access system. These observations are tied to the volume of requests Government received, especially over the last fiscal year, and obligate my office to continue scrutiny of the potential impact of the fee.

Finally, and as I have noted on multiple occasions, many of the challenges I have identified should not be laid at the feet of the public servants across Government who deliver access to information services. I am deeply impressed with their commitment and dedication to the responsibilities given them. Their efforts would be enhanced greatly by Government allocating sufficient resources to address the issues detailed in this report.

Michael McEvoy

Information and Privacy Commissioner  
for British Columbia

# Executive Summary

The right to access public body records without unreasonable delay is protected by law and is critical to enabling an informed and well functioning democratic society. The provincial Government receives thousands of requests for access to records each year and, as such, the timeliness of Government in responding to access requests is important.

This report marks the ninth review from the Office of the Information and Privacy Commissioner (OIPC) on Government's timeliness, and covers the three-year period of April 1, 2020 to March 31, 2023. Where possible, the OIPC also examined historical data on Government's performance over the past decade.

During the review period, Government committed to spend \$5.5M to modernize its technology and processes for responding to FOI requests. The OIPC welcomes any effort to address the existing and long-standing delay in responding to access requests.

However, when comparing Government's overall timeliness in responding to access requests against FIPPA's key benchmark of no later than 30 business days,<sup>1</sup> Government met the 30-day time frame in only 55% to 58% of requests closed during the past three fiscal years. This performance follows a slow but steady decline in Government timeliness over the past decade.

Government is taking much longer than before to respond to requests and the average response time has also crept up over the last decade, reaching a 13 year high of 85 days in the last fiscal year. Government's overall timeliness is impacted by the ministries' performance, and it was evident that some ministries have been much slower than others in responding to requests.

Government provided several factors to explain why it took longer to respond to requests:

- the COVID-19 pandemic and the ongoing toxic drug crisis that increased in severity during the height of the pandemic;
- the exceptional challenges certain ministries faced during this time;
- requests became more complex and the number of pages of records to be searched or processed in response to an access request increased; and
- FOI resources were assigned to address the backlog of unanswered requests received in previous years.

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<sup>1</sup> In this report, *30 days* is used interchangeably with *30 business days*.



While the OIPC understands that the pandemic changed public sector work in various ways, times of crises demand enhanced transparency on the part of Government as it makes critical decisions that affect British Columbians. As far as the backlog from previous years, Government allowed these delayed matters to significantly accumulate over the years and now must allocate additional resources to address the issue.

Additionally, Government systematically failed to respond to requests within the legal timelines permitted by FIPPA. Over the three-year period OIPC reviewed, Government exceeded the time to respond to a request without legal authority to do so in 5,100 instances. This represented nearly one out of every five requests closed, with media and political party applicants most impacted.

Compounding this failure, the average number of business days to conclude these unlawfully delayed requests more than quadrupled. This meant that applicants who did not receive a response within FIPPA's timelines waited even longer to have their request concluded – on average an additional 192 business days beyond the legislated timeframe.

As a related issue, the OIPC also reviewed timeliness and request volume with Government's \$10 application fee in mind. Over the three-year period, the volume of requests for personal records, to which the application fee did not apply, experienced a slight uptick. However, over the same period, general requests, to which the application fee applied,<sup>2</sup> declined by more than 50% (mostly by political parties, media, and individual applicants). Combined with findings on Government's timeliness during this period, it is clear the imposition of the application fee has not yielded quicker responses for applicants.

Overall, Government's timeliness performance is declining. Its ongoing failure to respond to many requests within the time permitted by law and delayed responses without legal authority have compounded the backlog of requests and have significantly increased the average number of days it takes to respond. This means applicants are waiting longer than ever for Government to respond to their access requests.

This report makes six recommendations for Government to improve its timeliness and compliance with FIPPA. Government needs to identify and correct lags that exist in its system, provide adequate resources, and continue and build upon its FOI modernization. In addition, Government is to submit a plan to the OIPC, detailing how it will eliminate the accumulation of unlawfully delayed requests within two years and prevent future requests from becoming unlawfully delayed.

The public expects and the law demands that public bodies have an efficient and timely access request system. Public bodies are expected follow the spirit and letter of the law – so too must the provincial Government.

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<sup>2</sup> Government began administering the application fee from November 29, 2021 onwards.

# Background

Thirty years ago, British Columbia legislators enshrined the right of access to information. The *Freedom of Information and Protection of Privacy Act* (FIPPA) gave citizens the right to ask public bodies for records about themselves or matters of general interest and, subject to certain exceptions, those bodies were required to provide them. Making that system meaningful meant requiring public bodies to respond to access requests within clear time frames.

The OIPC tracks how timely the provincial Government is when responding to access requests. This is the ninth such report, covering the three-year period of April 1, 2020 to March 31, 2023. We obtained relevant data for this assessment from Government's central freedom of information (FOI) program, Information Access Operations (IAO), and followed up by interviewing IAO staff to gain a better understanding of the context underlying those statistics.<sup>3</sup> We further sought to put these numbers in a historical perspective by looking at Government's performance over the past decade.

It is fair to say extraordinary circumstances overlaid the three years under examination in this report. These include the COVID-19 pandemic, several natural disasters, and the deepening drug toxicity crisis. These pointed to a double-edged challenge for Government and access applicants.

On the one hand, these circumstances could account for some delay in responding to access requests. Interviews with IAO staff disclosed that in certain situations these matters did result in resources being moved away from processing access requests. Indeed, the Commissioner recognized these challenges in March 2020, when he deemed it fair and reasonable to grant two extensions for Government and all public bodies to respond to access requests.<sup>4</sup>

On the other hand, a time of crises demands enhanced transparency on the part of Government as it makes critical decisions potentially affecting millions of British Columbians.

Finally, there were amendments to FIPPA in November 2021, that among other things, imposed a new \$10 application fee for general access requests. All these matters form a backdrop in which we considered Government's timeliness performance of the past three years.

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<sup>3</sup> Some numbers in this report differ from Government's reporting on its administration of FIPPA. Government informed the OIPC that its FOI request data varied slightly (< 1%) between the time of its reporting and when IAO provided the data to OIPC for this investigation, noting that data provided to the OIPC is more current. The OIPC relied on this data received from IAO; and the charts, tables, and analyses contained in this report are based on this IAO data.

<sup>4</sup> The first decision was issued on March 18, 2020, and the second on April 22, 2020. These extensions applied to requests received between March 1 and May 15, 2020.

# Application of FIPPA

Timeliness in responding to an access to information request is assessed against FIPPA's key benchmark requiring public bodies to respond to a request no later than 30 business days<sup>5</sup> after receiving it.<sup>6</sup>

Only if it meets prescribed circumstances can a public body take longer than 30 days to respond to a request. Public bodies can legally extend the time for response, up to an additional 30 business days, if:

- the applicant does not provide sufficient detail to identify the record requested;
- a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with public body operations;
- more time is required to consult with a third party or another public body before a decision on whether to grant access to the record can be made; or
- the applicant has consented to an extension.<sup>7</sup>

The Commissioner can also grant time extensions for longer periods for the above four reasons, or if it would otherwise be fair and reasonable to do so in the circumstances.<sup>8</sup>

If the time to respond to an access request is extended for any of the above reasons, the public body must inform the applicant of:

- the reason for the extension;
- when a response can be expected; and
- that the applicant may complain about the extension (unless they provided consent for the extension).

To be clear, these prescribed circumstances allowing for a time extension represent an exception to the 30-day time limit for a public body to respond to an access request. The longer past the 30 days a public body takes to respond, the less timely the response is.

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<sup>5</sup> In this report, *30 days* is used interchangeably with *30 business days*.

<sup>6</sup> S. 7(1) of FIPPA.

<sup>7</sup> Applicant consent must be in writing and be done in a manner that specifies the period of time of the extension for which the applicant is providing consent. S. 10 of FIPPA Regulation.

<sup>8</sup> S. 10(2) FIPPA.



# Government's access request process

Access requests made to Government are categorized and designated as either an access request for “general” records that do not contain personal information, or for “personal” records. The same response-time requirements apply, regardless of which type of request is made.

The IAO is responsible for managing and coordinating the access request process for Government ministries. The ministries are the public bodies that applicants request records from, and ministries have final approval for the release of records. The graphic below explains Government's regular process for responding to access requests.



With the introduction of the application fee in November 2021, applicants must also pay a \$10 fee when requesting general records before IAO will process the request.<sup>9</sup> The OIPC's [Access](#)

<sup>9</sup> Unless the application fee is waived, such as is the case for Indigenous Governing Entities.

[application fee six-month review](#)<sup>10</sup> provides a detailed explanation of Government’s application fee process.

Additional steps to this process may include requests made to multiple ministries, requests containing a large volume of records, or requests requiring consultation with third parties. Also, large or complex requests may require applicants to pay processing fees, which places the file “on hold” until the fee process is concluded. Further, IAO may need to notify a third party if responsive records include information about that party.

## Freedom of information modernization

During the three-year period under review, Government committed to, and is to be commended for, commencing a program to modernize its FOI system. Starting in the spring of 2021, Government committed to spend \$5.5M over three years to modernize its technology and processes for responding to freedom of information related requests.<sup>11</sup> Projects delivered include software to convert common file types to pdf,<sup>12</sup> facilitate identification and removal of duplicate records, and a new case management system that initially enabled five Government ministries and IAO to manage access requests within a unified electronic system. This system allows IAO and the ministries to upload and process records and communicate directly with each other. Government onboarded all remaining ministries by the end of 2023/24. Government advised that a preliminary analysis shows time savings associated with these new systems - a matter our office will continue to monitor.<sup>13</sup>

In another positive development, Government has, since December 2020, increased the number of record categories it proactively discloses from eight to 15.<sup>14</sup> These are the types of records that are commonly requested by applicants, and ones that our office has encouraged Government to post without a request to improve accountability. Categories include Minister and Deputy Minister calendars, briefing notes, transition binders, expenses, contracts, and FOI summaries and records.<sup>15</sup> Further efforts to increase the number of proactive disclosures, including those available through Government’s Open Information portal,<sup>16</sup> should help reduce the number of requests for records.

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<sup>10</sup> <https://www.oipc.bc.ca/investigation-reports/3744>

<sup>11</sup> [Report on the administration of the Freedom of Information and Protection of Privacy Act 2022/23](#)

<sup>12</sup> According to an interview with IAO on May 15, 2023, Government estimates this software will save over 500 hours annually and will result in more streamlined packages for applicants.

<sup>13</sup> According to an interview with IAO on May 15, 2023, Government stated that, in preliminary analysis of the pilot involving five ministries, the system saved an average of two hours of processing time per request.

<sup>14</sup> [Report on the administration of the Freedom of Information and Protection of Privacy Act 2022/23](#)

<sup>15</sup> <https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/ministerial-directives-proactive-release>

<sup>16</sup> [Ibid.](#)

# Findings

Public bodies are legally obligated to answer requests within the prescribed timelines set out in FIPPA. This means they must align their resources with the volume of requests received. Statistics related to the volume of access requests received and closed by public bodies do not by themselves reveal the timeliness of those transactions, but they do provide operational context. For this reason, this report charts the volume of requests Government **received** and **closed**, both during the period under review and over a longer time horizon to gain a historical perspective of Government's performance.

## Government received and closed the fewest requests in a decade

Figure 1 reveals that over the seven years leading up to 2020/21, access requests received by Government increased – thereafter they began a pronounced three-year decline. Interestingly, file closures followed a similar trajectory. On the surface at least, this might suggest Government was keeping pace with workflow demand. However, this was not and is not the case.

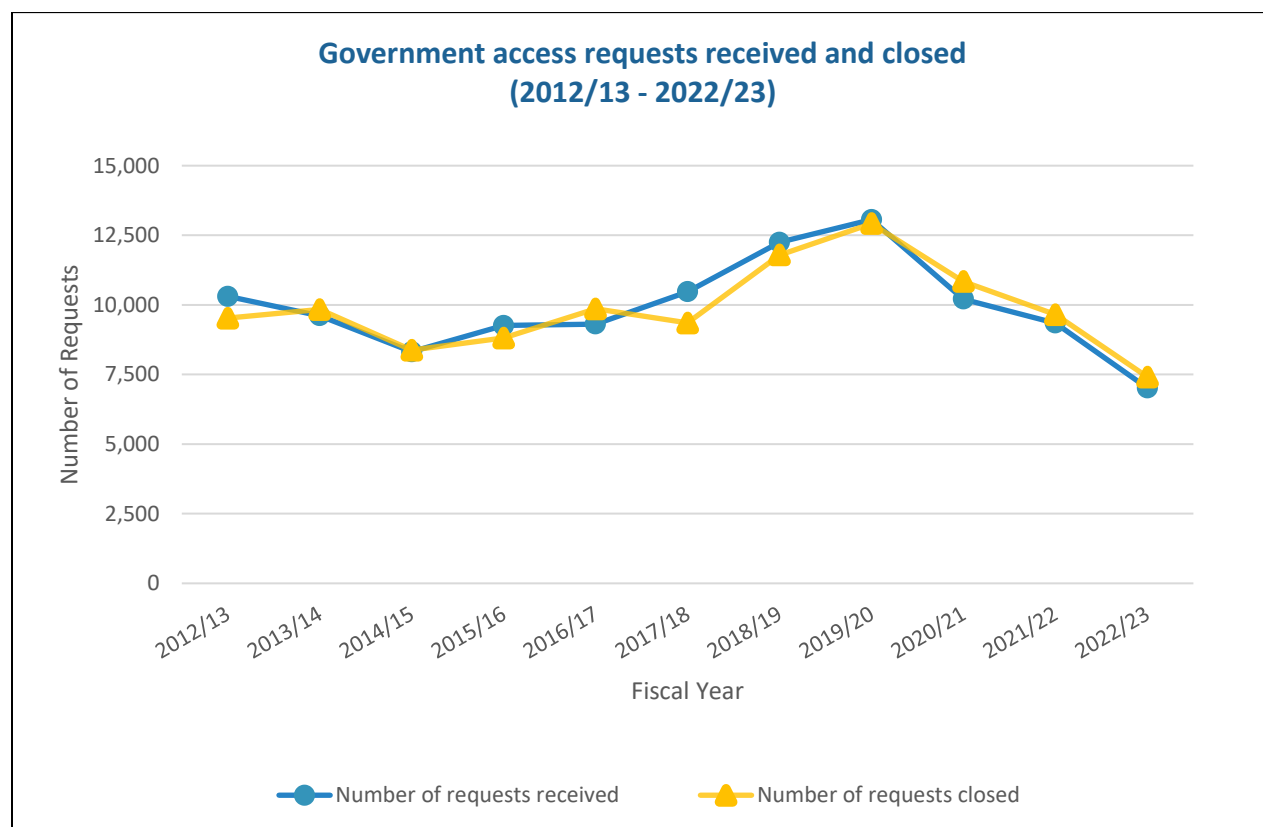


Figure 1

## Government's timeliness has slipped

### The 30-day benchmark

Two metrics are key to judging the timeliness of Government's response to access requests. The first is how often Government responds to an access request within 30 days.

FIPPA sets this benchmark in s.7(1):

Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).

There are exceptions to the 30-day rule where public bodies can apply or request an extension, but FIPPA clearly establishes 30 business days as the expectation for response.

### *Government's 30-day timeliness performance*

The likelihood an applicant's request would be met within 30 days was only slightly better than the flip of a coin. Specifically, Government met the 30-day time frame in just over half of the cases it processed during the past three fiscal years: 55%, 55% and 58% of the time respectively.

This performance follows a slow but steady decline in Government timeliness over the past decade, as disclosed in Figure 2 below. Ten years ago, Government met the 30-day benchmark in nearly three quarters of cases closed.

It is an understatement to say this downward trend is not a positive one.

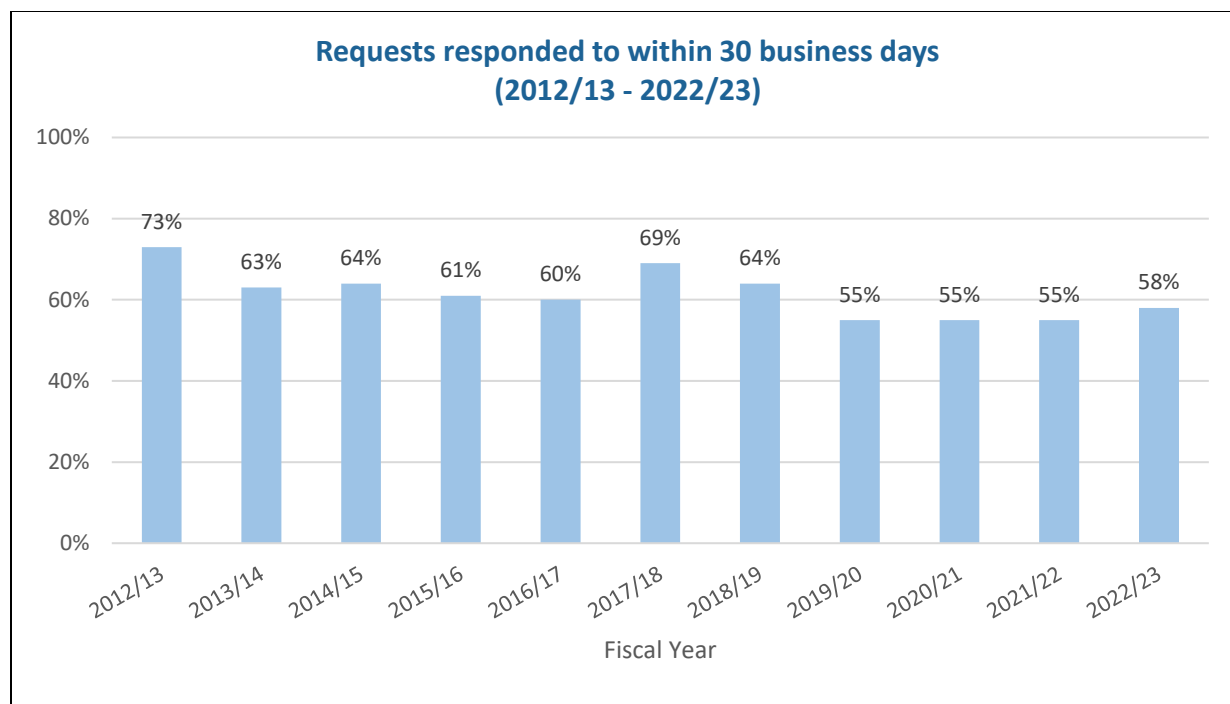


Figure 2

### Average number of processing days

If Government met the 30-day benchmark for response in only just over 50 percent of the time, how long did it take on average for Government to answer an access request? This is a second metric, set out in Figure 3, that provides a very useful barometer of Government's timeliness performance. The length of time Government takes to respond is clearly going in the wrong direction.



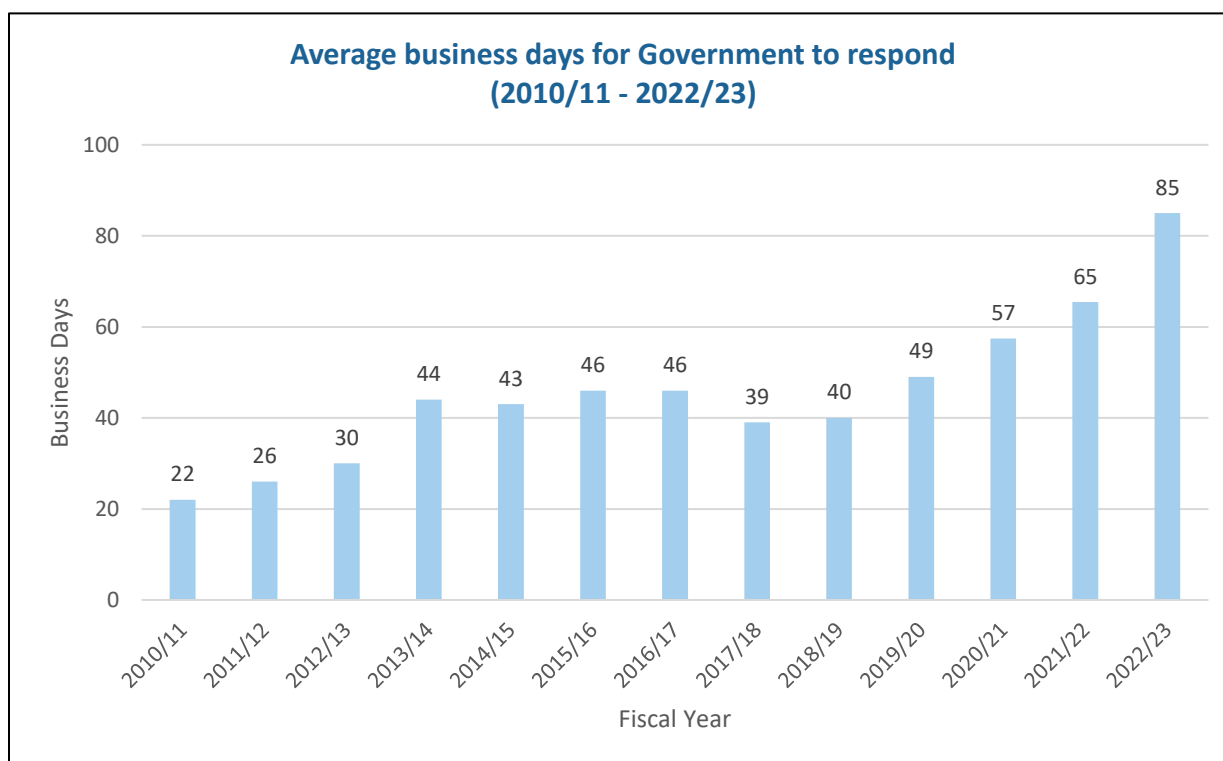


Figure 3

A decade ago, Government was, on average, responding to access requests in a timely way. But that average has crept up over time, reaching an all-time high since we started collecting data 13 years ago - to 85 days in the last fiscal year. It is important to remember this Figure is more than numbers on a chart. The wait times involve real people trying to get information about themselves, or about the Government who serves them – an individual trying to get a record of their dealings with the Ministry of Children and Family Development (MCFD) for example, or a journalist with a deadline looming on a story impacting a multitude of citizens.

### Average days to respond by ministry

It is also important to appreciate that, over the past three years, some ministries have been more timely than others in responding to requests.

Table 1 shows, for example, that the Ministries of Finance, Social Development and Poverty Reduction, and Public Safety and Solicitor General were fastest in responding to access requests.

Meanwhile, other ministries, such as MCFD, Health, Mental Health and Addictions, and Office of the Premier stood out as slower to respond. In specific years, these ministries took anywhere from eight to 184 days *longer* than the average business days for Government overall.

**Table 1 – Average business days to respond by Ministry  
(2020/21 – 2022/23)**

	2020/21	2021/22	2022/23
<b>Government Overall</b>	57	65	85
Advanced Education and Skills Training	42	31	N/A <sup>17</sup>
Agriculture and Food	31	38	57
Attorney General	61	62	31
<b>Children and Family Development</b>	<b>93</b>	<b>114</b>	<b>143</b>
Citizens' Services	47	59	46
Education and Child Care	53	41	41
Emergency Management and Climate Readiness	N/A	N/A	48
Energy, Mines and Low Carbon Innovation	57	76	112
Environment and Climate Change Strategy <sup>18</sup>	47	46	38
<b>Finance<sup>19</sup></b>	<b>39</b>	<b>35</b>	<b>41</b>
Forests	55	63	81
<b>Health</b>	<b>85</b>	<b>73</b>	<b>180</b>
Housing	N/A	N/A	23
Indigenous Relations and Reconciliation	50	47	65
Jobs, Economic Recovery and Innovation	80	60	49
Labour	62	61	34
Land, Water and Resource Stewardship <sup>20</sup>	N/A	13	24
<b>Mental Health and Addictions</b>	<b>90</b>	<b>75</b>	<b>83</b>
Municipal Affairs	56	64	28
<b>Office of the Premier</b>	<b>57</b>	<b>126</b>	<b>269</b>
Post-Secondary Education and Future Skills	N/A	N/A	42
<b>Public Safety and Solicitor General<sup>21</sup></b>	<b>35</b>	<b>33</b>	<b>28</b>
<b>Social Development and Poverty Reduction</b>	<b>30</b>	<b>22</b>	<b>21</b>
Tourism, Arts, Culture and Sport	76	62	36
Transportation and Infrastructure	47	43	47

<sup>17</sup> N/A reflects that this Ministry did not exist at that time.

<sup>18</sup> Includes the Environmental Assessment Office.

<sup>19</sup> Includes the Crown Agencies Secretariat, Government Communications and Public Engagement, Liquor Distribution Branch, and the BC Public Service Agency.

<sup>20</sup> In 2022/23, renamed Water, Land and Resource Stewardship.

<sup>21</sup> Includes Emergency Management BC and the Coroner's Service of BC.

## Recommendation 1

Government should regularly evaluate each ministry's FOI processes to identify and correct any lags and provide written evaluation reports to the OIPC.

### Government's explanation

Government cited several reasons for increasing response times:

- The COVID-19 pandemic, and the ongoing toxic drug crisis that increased in severity during the height of the pandemic. This specifically affected the response time of the Ministry of Mental Health and Addictions, which is responsible for managing this difficult issue.
- Certain ministries faced exceptional challenges with MCFD being a particular example as discussed below.
- Requests becoming more complex and increasing in the number of pages of records that must be searched or processed in response to an access request.
- The resources assigned to address the backlog of incomplete files received in previous years were not available to work on newer files.

Before looking at each of these reasons it should be said that it was clear to our office that the public servants at the front lines of administering the system understand and care deeply about its purposes and carrying out its aims. Where their best efforts sometimes fall short, it was not for lack of effort or commitment, but rather the lack of resources backing them up.

### *The impact of COVID-19*

Unquestionably, the COVID-19 pandemic impacted Government's response time, at least for a short while. In a small number of cases, ministry resources were literally moved from responding to access requests to working the frontlines of the crisis. In several cases, staff needed time to adjust to remote work. It was for that reason the Commissioner allowed for greater processing time of requests at the outset of the pandemic.<sup>22</sup> However, citizens expect that Government will *by now* have made the necessary adjustments to ensure the efficient operation of services, including access to information.

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<sup>22</sup> March 18, 2020 Decision: <https://www.oipc.bc.ca/news-releases/2399>  
April 22, 2020 Decision: <https://www.oipc.bc.ca/news-releases/2404>

### *MCFD challenges*

This ministry receives many complex personal requests each year, which may require Government to search and process hundreds of pages of records in response to a single request. The sensitive nature of these requests for personal records requires careful processing to ensure Government is appropriately protecting personal information when it responds.

The statistics bear out the challenges Government described in processing requests at MCFD. However, we are long past the point of being surprised by these issues. That they are especially sensitive and complex has been known for a long time. People seeking information from the Ministry are often going through some of the most difficult and traumatic experiences of their lives. Where operational demands have increased, and that increase is clearly sustained, it is incumbent upon Government to address the challenge. We are encouraged that 12 additional staff were temporarily funded by MCFD to address requests for personal records during the 2021/22 to 2022/23 fiscal years and that the number of additional staff temporarily funded increased to 20 beginning in fiscal 2023/24. This may, in the short term, help IAO to complete the especially longstanding or complex files. But the evidence is clear that the issues are not temporary and require a systematic long-term resourcing approach. These are among the most sensitive access requests that Government responds to. They touch on the lives of children and families, often in the most trying circumstances. Government must rise to the challenge of responding to these files faster.

### **Recommendation 2**

Government should secure permanent resources to address both MCFD's personal access requests and to support Government's overall timeliness going forward.

### *The complexity of files*

Government said the files it now processes are more complex and involve much higher page counts per request.<sup>23</sup>

While this is true, Table 1 at the outset of the report showed that this is, to some extent, offset by a decline in the number of requests Government received over the three-year period under review. Moreover, the issue of complex files is not new -- it has been obvious to Government for some time. When operational demands change, it is stating the obvious to say Government

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<sup>23</sup> Government stated that from 2020/21 to 2022/23, the average number of pages to review in a personal request increased from 407 to 617. [Report on the administration of the Freedom of Information and Protection of Privacy Act 2022/23](#). Additionally, the average number of pages to review in general requests increased from 147 to 317 during the reporting period.

operations need to change to meet legislative responsibilities. Government needs to evaluate each ministries' FOI processes to identify proper strategies and correct any issues that slow down response times. Properly supporting IAO and ministry staff involved in access requests is key.

### **Recommendation 3**

Government should ensure appropriate resources and strategies exist within the ministries to manage FOI functions.

#### *Clearing a backlog*

Government told us that increased efforts to clear up what they describe as a small number of long-standing files<sup>24</sup> has inflated the average processing time.

Indeed, in its *Report on the administration of the Freedom of Information and Protection of Privacy Act 2022/23*, Government stated that if those closed requests overdue by a year or more were excluded from its calculations, the average processing time would drop to 38 business days in 2022/23.<sup>25</sup>

There is an obvious difficulty with this argument best illustrated by the baseball player who argues that if you just ignored his strike outs, their batting average would look so much better.

The issue is not that Government is finally getting to these longstanding files but, rather, it is that Government has allowed these delayed matters to significantly accumulate in the first place. And the reason for that has already been noted. Insufficient resources have been applied to deal with the volume and complexity of files received thereby causing Government to fall woefully behind in responding to requests in a timely way.

To address this backlog, Government stated that its work on FOI modernization is intended to improve the time to respond to access requests. It also acknowledged that a specific strategy to meet FIPPA timelines is needed, such as through new technologies and efforts to triage and address complex files. One example of this is the recent implementation of a Coordinated Response Unit (CRU). The IAO advised that the CRU, established in April 2023, is composed of four experienced FOI analysts and one team lead. Among other things, the CRU assists on high priority files, ensures consistency in processing cross-government requests, and takes on difficult or overdue files.

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<sup>24</sup> Approximately 8% of all requests.

<sup>25</sup> [\*Report on the administration of the Freedom of Information and Protection of Privacy Act 2022/23\*](#)



While Government has made some progress to reduce this backlog, there is clearly still significant planning and effort required to eliminate and prevent unlawfully delayed requests. The OIPC expects Government to create a plan that eliminates unlawfully delayed requests from accumulating and that Government reviews FOI processes to ensure that it follows the law when responding to all types of applicants. There is value in a dedicated team, such as the CRU, that specializes in managing complex files and preventing requests from becoming unlawfully delayed. However, to be effective, it needs to be properly resourced.

#### **Recommendation 4**

Government should submit a plan to the OIPC by March 31, 2024, detailing how it will eliminate the accumulation of unlawfully delayed requests within two years and prevent requests from becoming unlawfully delayed.

#### **Recommendation 5**

Government should allocate additional resources to the IAO to address complex and longstanding files.

And this in turn leads to another matter of deep concern to the OIPC and ultimately the public.

### **Government's ongoing contravention of FIPPA**

In prescribed circumstances where public bodies need more time to respond to an access request, they may apply a 30-day extension. Beyond that, they are legally obligated to seek permission from the Commissioner.<sup>26</sup>

It is deeply concerning that in more than 5,100 cases over the past three years, Government exceeded the time allowed to respond to a request without legal authority to do so. These cases represented 19%, or nearly one out of every five requests closed. In other words, Government is systematically failing to abide by the law.

Compounding this failure, the average number of business days that it took to conclude these unlawfully delayed requests has more than quadrupled to 192 as shown in Figure 4.

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<sup>26</sup> Regardless of whether an extension has been applied, if the public body does not respond to the request within the allotted time FIPPA considers this failure to respond as a decision by the public body to refuse access to the record.

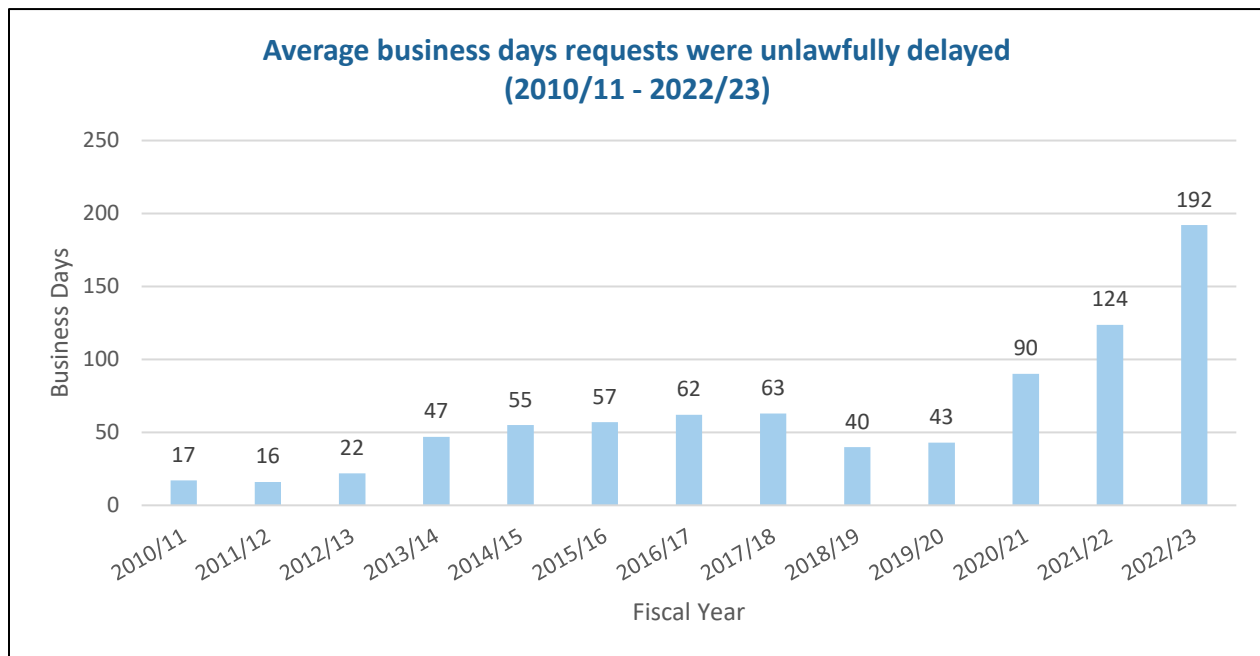


Figure 4

By the end of 2022/23, there were still 609 unlawfully delayed requests outstanding (see Figure 5 below). While this number is down from previous years, this remains unacceptable. The accumulating and longstanding files have impacted Government's ability to respond to current requests in a timely way.

There are two pressing issues here. The first and most glaringly obvious is that a government responsible for enacting and enforcing laws must also obey them. It brings both the law and Government's actions into disrepute when it simply ignores the legal requirement to respond on time to an access request or to get permission from the Commissioner to extend the time.

The second issue is Government is taking longer to close those files. Both issues need to be addressed.

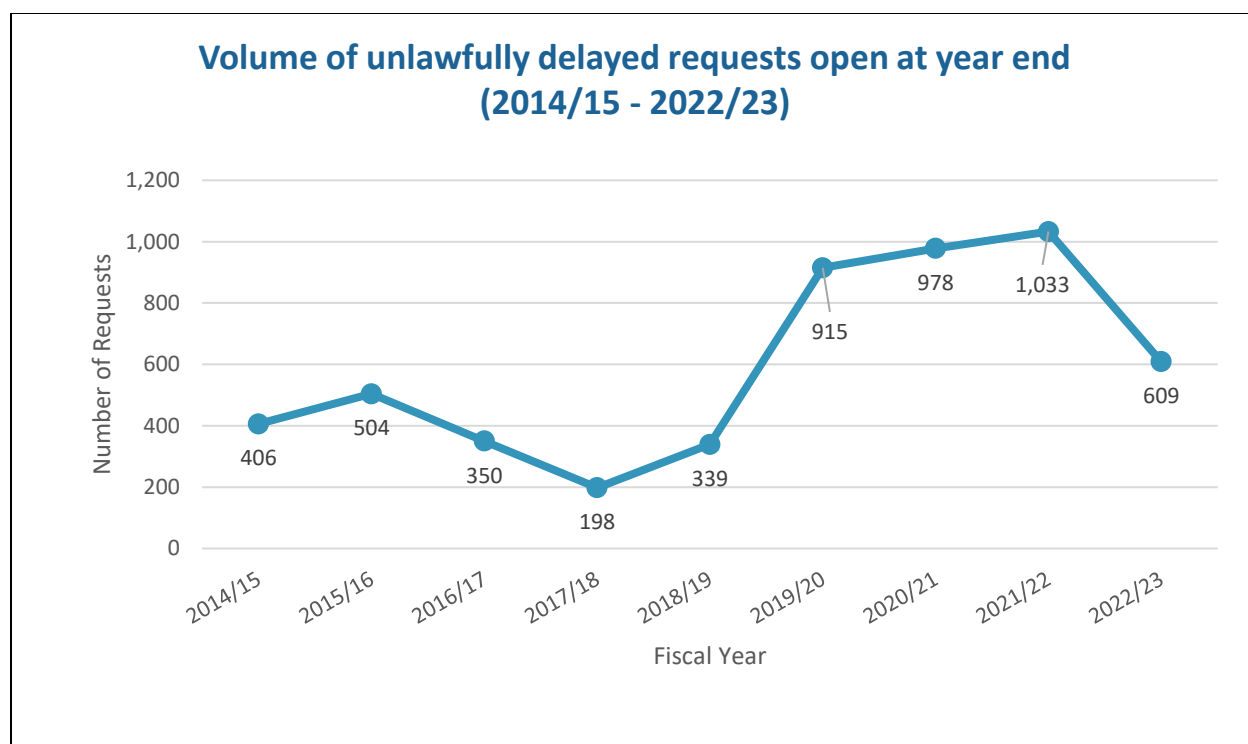


Figure 5

### Government contravened FIPPA more often for some applicant types

Government's failure to respond on time to an access request affected some applicant types more than others. Table 2 shows the percent of closed requests where Government failed to respond within FIPPA timeframes by each applicant type over the last six years.

While Government's compliance when responding to law firms and business applicants remained higher, it often failed to respond on time to most other applicant groups. Media and political party applicants were the most affected: in 2022/23, Government contravened FIPPA timelines in 43% of requests made by media, and 33% of requests by political parties.

### Recommendation 6

Government should regularly evaluate government-wide FOI processes specific to applicant type to identify and correct any delays.

Table 2 – Unlawfully delayed responses by applicant type (2017/18 – 2022/23)						
	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Business	9%	18%	18%	16%	13%	9%
Indigenous Governing Entity	N/A	N/A	N/A	0%	13%	32%
Individual	10%	13%	17%	16%	18%	22%
Interest Group	13%	15%	20%	14%	17%	18%
Law Firm	7%	11%	9%	9%	7%	9%
Media	20%	19%	20%	17%	23%	43%
Other Governments	0%	8%	9%	6%	32%	46%
Other Public Body	11%	19%	11%	18%	0%	27%
Political Party	5%	7%	18%	16%	28%	33%
Researcher	8%	30%	23%	14%	11%	17%

## Government's application fee

The focus of this report is Government timeliness in respect of access requests. However, we would be remiss if we did not, at least briefly, consider file volumes and timeliness in the context of the Government's \$10 access fee for certain records.

The Government itself has tied these issues together in discussing the background to the application of the fee:<sup>27</sup>

B.C. receives among the highest volumes of FOI requests in Canada with over 10,000 requests annually. This volume increased by more than 40% between 2018 and 2020. And while work is being done to modernize and streamline the FOI system, stakeholders have told government they are not getting their information fast enough. This is mostly because of overly broad requests that are slowing down the system.

The none too subtle suggestion is that the fee will cut down request volumes, or at least their breadth, and speed up timeliness. Clearly, timeliness has not improved to date and if by "overly broad requests" Government meant complex requests, those have not diminished either.

It is therefore worth looking at the volume of access requests received by Government during the past three years, with a particular view to the volume since the imposition of the \$10 fee, which was in effect for the entirety of 2022/23.

<sup>27</sup> [https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/information-management-technology/information-privacy/resources/2021-amendments/foipppa\\_amendments\\_application\\_fee.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/information-management-technology/information-privacy/resources/2021-amendments/foipppa_amendments_application_fee.pdf)

## The decline in general access requests

Table 3 shows that requests for personal records, to which a fee does not apply, experienced a slight uptick. Over the same period, general requests, to which a fee applies, declined by more than 50%.

Table 3 – Requests received (2020/21 – 2022/23)			
	2020/21	2021/22	2022/23
General Received	6,385	5,253	2,905
Personal Received	3,820	4,093	4,112
<b>Total</b>	<b>10,205</b>	<b>9,346</b>	<b>7,017</b>

It is useful to look at these general request volumes by applicant type. See Table 4.

Table 4 – Requests for general records received by applicant type (2020/21 – 2022/23)			
	2020/21	2021/22	2022/23
Business	235	284	291
Indigenous Governing Entity	0	0	16
<b>Individual</b>	<b>891</b>	<b>1,431</b>	<b>809</b>
Interest Group	207	165	239
Law Firm	211	244	243
<b>Media</b>	<b>756</b>	<b>908</b>	<b>286</b>
Other Governments	17	24	11
Other Public Body	12	15	9
<b>Political Party</b>	<b>4,003</b>	<b>2,091</b>	<b>909</b>
Researcher	53	91	92

It is evident that the decline of requests can be attributed mainly to three applicant types: political parties, media, and individual applicants.

In preparing our initial review of the impact of the application fee in Investigation Report 23-01,<sup>28</sup> several applicants told us that the levy did, and would continue to, dissuade them from

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<sup>28</sup> [Investigation Report 23-01: Access application fee six-month review](#)



making general requests. The further decrease in the volume of general requests disclosed in this report supports this.

We also noted in Investigation Report 23-01 that political party applicants were already making fewer requests before Government began collecting the fee. While expanded categories for proactive disclosure may have had an impact, it is likely the fee further contributed to this decline. Additionally, we observed in Investigation Report 23-01 that in the initial six-months following the introduction of the application fee, individuals seeking records increased. We now see that in doing a full year assessment, individual requests in 2022/23 actually fell approximately 10 percent compared to applications made prior to the imposition of the fee.

Media and opposition political parties play a vital role in our democratic system of government. This report on timeliness confirms the decline in their requests since the application fee was introduced and it is therefore a continuing matter of concern. Taken together, figures disclosed in this timeliness report obligate the OIPC to continue our scrutiny of the access fee and its effects on the freedom of information regime in British Columbia.

At the very least, as is clear from this report, the imposition of the fee has not yielded quicker responses for applicants.

# Conclusion

Thirty years after its proclamation in British Columbia the *Freedom of Information and Protection of Privacy Act* continues to play a fundamentally important role in our democratic system of government. Citizen right of access to the records of public bodies, which help hold those bodies to account, would be meaningless if not accompanied by deadlines — deadlines requiring public bodies to respond to a request within a reasonable time.

This report discloses Government's timeliness performance is declining. Its ongoing failure to respond to many requests within the time permitted by law and delayed responses without any legal authority to do so have added to a request backlog that have significantly increased average number of days taken to respond to a request.

As in past timeliness reports, Government offered numerous reasons for these negative trends. Some, such as the pandemic, were obviously not foreseen and required time to adjust. More often however the issues Government identified as problematic have been known to them for some time. It is for Government to properly organize itself to address these issues to meet its legal obligations. Government did reduce the backlog of unlawfully delayed requests from roughly 1,000 files to 600 files by the end of 2022/23, but much work remains to reduce the ongoing accumulation.

The OIPC will systematically follow up on the recommendations made in this report; and closely monitor Government's efforts to eliminate the backlog and to evaluate individual ministry FOI processes.

Further, the office will also continue its scrutiny of figures that shed light on the potential impact of the \$10 fee that Government charges individuals for access requests for general records.

# Summary of Recommendations

Government should:

1. Regularly evaluate each ministry's FOI processes to identify and correct any lags and provide written evaluation reports to the OIPC.
2. Ensure appropriate resources and strategies exist within the ministries to manage FOI functions.
3. Secure permanent resources to address both MCFD's personal requests and to support Government's overall timeliness going forward.
4. Allocate additional resources to the IAO to address complex and longstanding files.
5. Regularly evaluate government-wide FOI processes specific to applicant type to identify and correct any delays.
6. Submit a plan to the OIPC by March 31, 2024, detailing how it will eliminate the accumulation of unlawfully delayed requests within two years and prevent requests from becoming unlawfully delayed.