



Freedom of Information and Protection of Privacy Act

FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY REGULATION

B.C. Reg. 155/2012

Deposited and effective June 25, 2012
Last amended February 1, 2023 by B.C. Reg. 248/2022

Consolidated Regulations of British Columbia

This is an unofficial consolidation.

B.C. Reg. 155/2012 (O.C. 491/2012), deposited and effective June 25, 2012, is made under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, ss. 10 (1), 25 (4), 26, 32, 33.1 (1), 33.2 and 76 (1), (2) and (2.1).

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This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at www.bclaws.ca.

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Freedom of Information and Protection of Privacy Act

**FREEDOM OF INFORMATION AND PROTECTION OF
PRIVACY REGULATION**

B.C. Reg. 155/2012

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Freedom of Information and Protection of Privacy Act

**FREEDOM OF INFORMATION AND
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B.C. Reg. 155/2012**

Definitions

1 In this regulation:

“**Act**” means the *Freedom of Information and Protection of Privacy Act*;

“**commercial applicant**” means a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit;

“**health professional**” means a medical practitioner, psychologist, registered nurse or registered psychiatric nurse.

Oral requests

2 An applicant may make an oral request for access to a record if

(a) the applicant’s ability to read or write English is limited, or

(b) the applicant has a physical disability that impairs the applicant’s ability to make a written request.

[am. B.C. Reg. 64/2021, s. 3.]

Who may act for a minor

3 (1) A guardian of a minor may act for the minor in relation to any of the following sections of the Act if the minor is incapable of acting under that section:

(a) section 5;

(b) section 10 (1) (d);

(c) section 26 (d);

(d) section 27 (1) (a) (i);

(e) section 29 (1);

(f) Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 1 (a).]

(g) section 32 (b);

(h) section 33 (2) (c).

(2) A guardian of a minor may exercise a power granted to the guardian under subsection (1) of this section only if the power is within the scope of the guardian’s duties or powers.

[am. B.C. Reg. 297/2021, Sch. 3, s. 1.]

Who may act for an adult

4 (1) In this section, “**representative**” means any of the following persons:

(a) a committee appointed under the *Patients Property Act*;

(b) a person acting under a power of attorney;

- (c) a litigation guardian;
 - (d) a representative acting under a representation agreement, as defined in the *Representation Agreement Act*.
- (2) A representative of an adult may act for the adult in relation to any of the following sections of the Act:
- (a) section 5;
 - (b) section 10 (1) (d);
 - (c) section 26 (d);
 - (d) section 27 (1) (a) (i);
 - (e) section 29 (1);
 - (f) Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 1 (a).]
 - (g) section 32 (b);
 - (h) section 33 (2) (c).
- (3) A representative of an adult may exercise a power granted to the representative under subsection (2) of this section only if the power is within the scope of the representative's duties or powers.
- [am. B.C. Reg. 297/2021, Sch. 3, s. 1.]

Who may act for a deceased individual

- 5 (1) In this section:

“appropriate person” means,

- (a) in respect of a deceased adult, one of the following:
 - (i) a committee acting under section 24 of the *Patients Property Act* for the deceased;
 - (ii) if there is no committee acting for the deceased, the personal representative of the deceased;
 - (iii) if there is no committee acting for the deceased and no personal representative of the deceased, the nearest relative of the deceased, and
- (b) in respect of a deceased minor, one of the following:
 - (i) the personal representative of the deceased;
 - (ii) if there is no personal representative of the deceased, a guardian of the deceased immediately before the date of death;
 - (iii) if there is no personal representative or guardian of the deceased, the nearest relative of the deceased;

“nearest relative” means the first person referred to in the following list who is willing and able to act under subsection (2) of this section for a deceased individual:

- (a) spouse of the deceased at the time of death;

- (b) adult child of the deceased;
- (c) parent of the deceased;
- (d) adult sibling of the deceased;
- (e) other adult relation of the deceased other than by marriage;
- (f) an adult immediately related to the deceased by marriage;

“spouse” means a person who

- (a) is married to another person and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other person, or
 - (b) is living with another person in a marriage-like relationship for a continuous period of at least one year immediately before the death of the other person.
- (2) If an individual is deceased, an appropriate person may act for the deceased in relation to any of the following sections of the Act:
- (a) section 5;
 - (b) section 10 (1) (d);
 - (c) section 26 (d);
 - (d) section 27 (1) (a) (i);
 - (e) section 29 (1);
 - (f) Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 1 (a).]
 - (g) section 32 (b);
 - (h) section 33 (2) (c).
- (3) If a nearest relative who is acting under this section ceases to be willing or able to act, the right to act under subsection (2) of this section passes to the person who is next in the definition of “nearest relative” and who is willing and able to act.
- (4) If the right to act under subsection (2) of this section passes to persons of equal rank in the listed order in the definition of “nearest relative”, the right passes to the person who is the eldest of the persons and descends in order of age to the next person who is willing and able to act.
- (5) A committee, or a guardian of a minor immediately before the minor’s death, may exercise a power granted under subsection (2) of this section to the committee or the guardian only if the power is within the scope of the duties or powers of the committee or the guardian.

[am. B.C. Regs. 64/2021, s. 8; 297/2021, Sch. 3, s. 1.]

Anthropological and heritage sites

- 6** For the purposes of section 18 of the Act,
- (a) a site has anthropological value if it contains an artifact or other physical evidence of past habitation or use that has research value, and
 - (b) a site has heritage value if it is the location of a traditional societal practice for a living community or it has historical, cultural, aesthetic, educational,

scientific or spiritual meaning or value for the Province or for a community including an Indigenous people.

[am. B.C. Reg. 297/2021, Sch. 3, s. 2.]

Disclosure relating to mental or physical health

- 7
- (1) The head of a public body may disclose information relating to the mental or physical health of an individual to a health professional for an opinion on whether disclosure of the information could reasonably be expected to result in grave and immediate harm to the individual's safety or mental or physical health.
 - (2) A health professional to whom information is disclosed under subsection (1) must not disclose or use the information except for the purposes described in that subsection.
 - (3) The head of a public body may require a health professional to whom information is disclosed under this section to do either or both of the following:
 - (a) enter into a confidentiality agreement;
 - (b) examine the record containing the information on the public body's premises.
 - (4) If a copy of a record containing information relating to the mental or physical health of an individual is forwarded to a health professional for examination, the health professional must return the record to the head of the public body after giving the opinion.
 - (5) The head of a public body may recommend that an applicant who makes a request for access to a record containing information relating to the applicant's mental or physical health should not examine the record until a health professional or a member of the applicant's family is present to assist the applicant in understanding the information in the record.

Disclosure for audit purposes

- 8 A public body may, for audit purposes, disclose personal information under section 33 (2) (s) of the Act to the ministry of the minister responsible for the administration of the *Financial Administration Act*.

[am. B.C. Reg. 297/2021, Sch. 3, s. 3.]

Purposes for collection of personal information

- 9 For the purposes of section 26 (d) of the Act, personal information may be collected for one or more of the following purposes:
- (a) to allow one or more
 - (i) public bodies, and
 - (ii) government institutions subject to the *Privacy Act* (Canada)specified by the individual to record or update

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- (iii) the individual's personal contact information, including the individual's address, phone number and e-mail address, and
 - (iv) the individual's name, if the individual has changed the individual's name under the *Name Act*;
- (b) if the person is acting for a deceased individual under section 5 of this regulation, to allow one or more
- (i) public bodies, and
 - (ii) government institutions subject to the *Privacy Act* (Canada)
- specified by the person to receive notification of the death in order that benefits or services relating to the deceased may be provided or cancelled, as applicable.

[am. B.C. Reg. 64/2021, s. 3.]

Consent respecting extending the time limit for responding to a request

- 10** For the purposes of section 10 (1) (d) of the Act, consent must
- (a) be in writing, and
 - (b) be done in a manner that specifies the period of time of the extension for which the applicant is providing consent.

Consent respecting personal information

- 11** (1) For the purposes of sections 26 (d), 32 (b) and 33 (2) (c) of the Act, consent must
- (a) be in writing, and
 - (b) be done in a manner that specifies
 - (i) the personal information for which the individual is providing consent, and
 - (ii) the date on which the consent is effective and, if applicable, the date on which the consent expires.
- (2) In addition to the requirements of subsection (1) of this section, for the purposes of
- (a) section 26 (d) of the Act, consent must be done in a manner that specifies
 - (i) who may collect the personal information, and
 - (ii) the purpose of the collection of the personal information,
 - (b) Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 4 (b).]
 - (c) section 32 (b) of the Act, consent must be done in a manner that specifies the use of the personal information, and
 - (d) section 33 (2) (c) of the Act, consent must be done in a manner that specifies
 - (i) to whom the personal information may be disclosed,
 - (ii) if practicable, the jurisdiction to which the personal information may be disclosed, and
 - (iii) the purpose of the disclosure of the personal information.

- (3) Subject to subsection (4), a consent under section 33.1 (1) (b) of the Act, as that section read on June 25, 2012, that was given before the date this regulation comes into force, and is still effective on the date this regulation comes into force, continues to be effective in accordance with its terms.
- (4) Unless a consent described in subsection (3) complies with the requirements set out in subsections (1) and (2) (d) within one year after the date this regulation comes into force, the consent ceases to be effective on the date that is one year after the date this regulation comes into force.

[am. B.C. Reg. 297/2021, Sch. 3, s. 4.]

Privacy breach notifications – affected individuals

- 11.1** (1) A notification under section 36.3 (2) (a) of the Act must
- (a) subject to subsection (2) of this section, be given directly to each affected individual in writing, and
 - (b) include the following information:
 - (i) the name of the public body;
 - (ii) the date on which the privacy breach came to the attention of the public body;
 - (iii) a description of the privacy breach including, if known,
 - (A) the date on which or the period during which the privacy breach occurred, and
 - (B) a description of the nature of the personal information involved in the privacy breach;
 - (iv) confirmation that the commissioner has been or will be notified of the privacy breach;
 - (v) contact information for a person who can answer, on behalf of the public body, questions about the privacy breach;
 - (vi) a description of steps, if any, that the public body has taken or will take to reduce the risk of harm to the affected individual;
 - (vii) a description of steps, if any, that the affected individual could take to reduce the risk of harm that could result from the privacy breach.
- (2) A notification may be given to an affected individual in an indirect manner if
- (a) the public body does not have accurate contact information for the affected individual,
 - (b) the head of the public body reasonably believes that providing the notice directly to the affected individual would unreasonably interfere with the operations of the public body, or
 - (c) the head of the public body reasonably believes that the information in the notification will come to the attention of the affected individual more quickly if it is given in an indirect manner.

- (3) If, under subsection (2), a notification may be given in an indirect manner, the notification must
- (a) be given by public communication that can reasonably be expected to reach the affected individual, and
 - (b) contain the information set out in subsection (1) (b).
- [en. B.C. Reg. 248/2022, Sch.]

Privacy breach notifications – commissioner

11.2 A notification under section 36.3 (2) (b) of the Act must be given to the commissioner in writing and must include the following information:

- (a) the name of the public body;
- (b) the date on which the privacy breach came to the attention of the public body;
- (c) a description of the privacy breach including, if known,
 - (i) the date on which or the period during which the privacy breach occurred,
 - (ii) a description of the nature of the personal information involved in the privacy breach, and
 - (iii) an estimate of the number of affected individuals;
- (d) contact information for a person who can answer, on behalf of the public body, questions about the privacy breach;
- (e) a description of steps, if any, that the public body has taken or will take to reduce the risk of harm to the affected individuals.

[en. B.C. Reg. 248/2022, Sch.]

Common or integrated program or activity – written documentation

12 The written documentation that confirms that a program or activity is a common or integrated program or activity is

- (a) a written agreement that
 - (i) is signed by the head of each public body and agency through which, or on whose behalf, as applicable, the services of the program or activity are provided, and
 - (ii) includes the following information:
 - (A) a description of the services provided by the program or activity;
 - (B) a description of the types of personal information collected, used and disclosed in the course of providing the program or activity;
 - (C) a description of the purposes, key objectives and expected benefits or outcomes of the program or activity;

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Schedule 1

- (D) a description of the respective roles and responsibilities of each public body and agency through which, or on whose behalf, the services are provided;
- (E) the date on which the program or activity will start and, if applicable, the date on which the program or activity will end, or
- (b) an order of the minister responsible for this Act that
- (i) states that a program or activity, which provides one or more services through one ministry working on behalf of one or more other public bodies or agencies, is a common or integrated program or activity, and
- (ii) includes, with respect to the program or activity, the information set out in paragraph (a) (ii).

[en. B.C. Reg. 175/2015, s. 1.]

Fees

- 13** (1) The maximum fees for services provided to different categories of applicants are set out in Schedule 1 of this regulation.
- (2) The application fee under section 75 (1) (a) of the Act is \$10.

[am. B.C. Reg. 298/2021.]

Form respecting notice of disclosure

- 14** The form prescribed for the purposes of section 25 (4) of the Act is set out in Schedule 2 of this regulation.

- 15** Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 5.]

SCHEDULE 1**SCHEDULE OF MAXIMUM FEES**

Item	COLUMN 1 Description of Services	COLUMN 2 Management Fees
1	For applicants other than commercial applicants:	
	(a) for locating and retrieving a record	\$7.50 per 1/4 hour after the first 3 hours
	(b) for producing a record manually	\$7.50 per 1/4 hour
	(c) for producing a record from a machine readable record from a server or computer	\$7.50 per 1/4 hour for developing a computer program to produce the record
	(d) for preparing a record for disclosure and handling a record	\$7.50 per 1/4 hour

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Schedule 1

Item	COLUMN 1 Description of Services	COLUMN 2 Management Fees
	(e) for shipping copies (f) for copying records (i) floppy disks (ii) CDs and DVDs, recordable or rewritable (iii) computer tapes (iv) microfiche (v) microfilm duplication (vi) microfiche or microfilm to paper duplication (vii) photographs, colour or black and white (viii) photographic print of textual, graphic or cartographic record, black and white (ix) dot matrix, ink jet, laser print or photocopy, black and white (x) dot matrix, ink jet, laser print or photocopy, colour (xi) scanned electronic copy of a paper record (xii) photomechanical reproduction of 105 mm cartographic record/plan (xiii) slide duplication (xiv) audio cassette tape (90 minutes or fewer) duplication (xv) video cassette recorder (VHS) tape (120 minutes or fewer) duplication	actual costs of shipping method chosen by applicant \$2 per disk \$4 per disk \$40 per tape, up to 2 400 feet \$3 per fiche \$25 per roll for 16 mm microfilm, \$40 per roll for 35 mm microfilm \$0.50 per page (8.5" x 11") \$5 to produce a negative \$12 each for 16" x 20" photograph \$9 each for 11" x 14" photograph \$4 each for 8" x 10" photograph \$3 each for 5" x 7" photograph \$12.50 each (8" x 10") \$0.25 per page (8.5" x 11", 8.5" x 14" or 11" x 17") \$1.65 per page (8.5" x 11", 8.5" x 14" or 11" x 17") \$0.10 per page \$3 each \$0.95 each \$5 per cassette plus \$7 per 1/4 hour of recording \$5 per cassette plus \$7 per 1/4 hour of recording
2	For commercial applicants for each service listed in Item 1	the actual cost to the public body of providing that service

SCHEDULE 2

PRESCRIBED FORM UNDER SECTION 25 (4) OF THE ACT

..... *[name of public body]* has disclosed information that relates to you in compliance with the requirements of section 25 of the *Freedom of Information and Protection of Privacy Act* (“Act”) which requires a public body to disclose, without delay, information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

The information disclosed is*[describe the information]*..... .

The information was disclosed*[describe when and how the information was disclosed]*..... .

The information was disclosed to *[tick the appropriate box and provide the information in the brackets unless doing so could reasonably be expected to threaten, or result in immediate and grave harm to the safety or mental or physical health of a person under section 19 of the Act, or unreasonably invade the personal privacy of a third party under section 22 of the Act]*

- the public.
- an affected group *[describe the affected group]*.
- an applicant *[identify the applicant]*.

The reason for disclosure of the information is*[explain the reason for which the information was disclosed]*..... .

The decision to disclose this information was made by*[name, job title]*..... .

Should you have any questions about the disclosure of this information, please contact*[name, job title, contact information]*..... .

Signed..... *[name, job title]*

SCHEDULE 3

Repealed. [B.C. Reg. 297/2021, Sch. 3, s. 5.]