

INTERPRETATION BULLETIN

Information Available to the Public

This interpretation bulletin outlines the elements to consider when determining if a record falls under the published information or information available to the public exemption, as set out in **section 22** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 15** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

Section 22 of FIPPA states:

A head may refuse to disclose a record where,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Section 15 of MFIPPA states:

A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Why is this exemption necessary?

Sections 22 of FIPPA and 15 of MFIPPA allow an institution to withhold records if the information in the records has been published or is already available to the public, or if the head of the institution reasonably believes it will soon be published. This exemption is intended to allow an institution to refer a requester to a source of information that is, or will soon be, publicly available.

Information published or currently available to the public

To rely on the exemption in section 22(a) of FIPPA and section 15(a) of MFIPPA, the institution must establish that the information requested has been published or is available to the public.

Sections 22(a) of FIPPA and 15(a) of MFIPPA are intended to enable an institution to refer a requester to a publicly available source of information where the balance of convenience favours this way of access to the information, and the request can be satisfied through the alternative source. It is not intended to be used to avoid an institution's obligations under the act.¹

The institution must take adequate steps to ensure that the record that they allege is publicly available is the same record that was requested.² The institution has a duty to identify or provide the requester with a description of the publicly available information or record(s) in question³ and to inform the requester of the specific location.⁴

Section 22(a) of FIPPA and section 15(a) of MFIPPA do not permit an institution to withhold a small amount of publicly available information from a larger record, particularly where the entire record is otherwise subject to disclosure under the act. A requester should not be required to compile small pieces of information from a variety of sources to obtain a complete version of a record that could be disclosed.⁵

The institution must establish that the record is available to the public generally, through a "regularized system of access," such as a public library or a government publications centre.⁶

To establish that a regularized system of access exists, the institution must show that:

- a system exists,
- the record is available to everyone, and
- there is a pricing structure applied to all who wish to obtain the information.⁷

¹ Orders [P-327](#), [P-1114](#) and [MO-2280](#).

² Order [MO-2263](#).

³ Order [P-191](#).

⁴ Order [M-729](#), [P-123](#) and [P-204](#).

⁵ Order [PO-2641](#).

⁶ Orders [P-327](#), [P-1387](#) and [MO-1881](#).

⁷ Order [MO-1881](#).

The exemption may apply even if the alternative system of access includes a fee different from the fee structure under the act.⁸ However, if the cost of accessing a record outside the act is much higher, the IPC may find this to be an effective denial of access, in which case the exemption would not apply.⁹

The exemption can still apply if the source of the record is a private organization.¹⁰ However, if the private organization retains some residual discretion to refuse to provide the record to the requester, access cannot be said to be “publicly available.”¹¹ A record may not be publicly available if it is only available to a limited sector of the public or those members of the public engaged in a specific type of business.¹²

Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include:

- unreported court decisions,¹³
- statutes and regulations,¹⁴
- property assessment rolls,¹⁵
- septic records,¹⁶
- property sale data,¹⁷
- police accident reconstruction records,¹⁸ and
- orders to comply with property standards.¹⁹

Information soon to be published

Section 22(b) of FIPPA and section 15(b) of MFIPPA apply to exempt records that the head of the institution reasonably believes will be made publicly available within 90 days after the request is made or within such further time necessary for the material to be translated and printed.

This section does not apply when the record or the information may be made available on some unascertained date through an alternate access mechanism or where there is no evidence of an intention to publish the record or information at issue.²⁰

8 Orders [P-159](#), [PO-1655](#), [MO-1411](#) and [MO-1573](#).

9 Order [MO-1573](#).

10 Order [P-496](#).

11 Order [P-496](#) and [PO-2737](#).

12 Order [P-204](#).

13 Order [P-159](#).

14 Orders [P-170](#) and [P-1387](#).

15 Order [P-1316](#).

16 Order [MO-1411](#).

17 Order [PO-1655](#).

18 Order [MO-1573](#).

19 Order [MO-2280](#).

20 Order [M-467](#).