

FREQUENTLY ASKED QUESTIONS

How to Access the Records of Children or Incapable adults

IAO: Information Access Operations **MCFD:** Ministry of Children and Family Development

FOIPPA: *Freedom of Information and Protection of Privacy Act*

FOIPP Regulation: *Freedom of Information and Protection of Privacy Regulation*

CFCSA: *Child, Family and Community Service Act*

1. If my child is in the care of the MCFD, can I request access to his/her personal information?

If a child under 12 years of age is currently in the custody of the MCFD, you are not entitled to access to his or her personal information: see section 76(1) of the CFCSA. You may re-apply for access once the child is returned to your legal care.

2. Why do I have to explain why I want my child's records?

Section 5 of the FOIPPA, section 3 of the FOIPP Regulation, and section 76 of the CFCSA indicate that a request for access to a child's personal information **must be made on the child's behalf**. The rationale for requiring applicants to indicate how they are acting on behalf of the child is based on previous decisions of the Information and Privacy Commissioner, which have decided that an individual claiming to exercise the right of access to a record on behalf of another is required to be truly acting "on behalf of" that other person as opposed to acting in their own personal interests.

3. Why do I have to get the signature(s) of the child's other guardian(s) or explain why I haven't provided this?

Section 40 of the *Family Law Act* states that a child's guardian may exercise all guardianship responsibilities as long as they do so in consultation with the child's other guardian(s). By having the other guardian(s) sign the Guardianship Declaration form we can be assured that the other guardian(s) have been consulted regarding the decision to apply for access to the child's information. The exceptions are if a court order or agreement outlines guardianship responsibilities differently, or if it is unreasonable or inappropriate to consult. It is important that you include any court orders or agreements that have been made regarding guardianship of your child and let us know if there are reasons why you are unable to have the other guardian(s) sign the form.

4. What if I want the records for a Family Court matter?

When a parent or other applicant indicates they require access to a child's records for a court matter related to guardianship or parenting arrangements, the Ministry has been unable to conclude that the applicant is acting "on behalf" of the child for the purposes of section 5 of the FOIPPA, section 3 of the FOIPP Regulation, and section 76 of the CFCSA.

When IAO denies a parent or other applicant access to a child's information because the applicant does not meet the legislative requirements for an access to information request, this does not close the door to the Court obtaining this information if needed to make a decision. Any party to a proceeding under the *Family Law Act* has the option of applying to the court for a Court Order directing MCFD to produce specified records. However, that judicial process is completely separate from the access to information process under FOIPPA.

5. Why do I have to obtain the consent of my child who is over 12 years of age?

The CFCSA recognizes the right of a child 12 years and over to act on his or her own behalf unless he or she is incapable.

6. How do I get access to the personal information of my incapable child over 12 but under 19 years?

If a child over 12, but under the age of 19 years, is unable to understand and provide informed written consent, you will need to establish eligibility to act for an incapable minor under s. 76 of the CFCSA. You will need to complete the Guardian Declaration form.

7. How do I access the information of an incapable adult 19 years or over?

If an adult over 19 is unable to understand and provide informed written consent, you will need to establish eligibility to act for the person under section 4 of the FOIPP Regulation (see text box). You will need to provide a copy of your documentation (e.g. Representation Agreement) to enable IAO to proceed with your request.

From the *Freedom of Information and Protection of Privacy Regulation*

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 representation 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) Section 30.1 (a);
- (g) Section 32 (b);
- (h) Section 33.1 (1) (b).

If you have any questions about the above, please contact IAO at:

FOI.requests@gov.bc.ca or via address, fax or telephone number below:

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