

FOI Assist Seminar Series 2026
Seminar #1

Third Party Information & The Affected Person Process

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Third Party Information & The Affected Person Process
January 28, 2026



FOI Assist Seminar Series 2026, Seminar #1: Third Party Information & The Affected Person Process

Program: January 28, 2026, 10:00 am – 11:00 am Eastern Time (Toronto)

Agenda:

- Introduction to the FOI Assist Seminar Series
- Third Party Exemption
 - Overview
 - What is Covered?
- The Affected Person Process
 - Basis and Purpose
 - Conducting the Process
 - Tips for Success
- Next Steps for Seminar Attendees

Introduction to the FOI Assist Seminar Series

Third Party Information & The Affected Person Process
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Introduction to the FOI Assist Seminar Series (2026)

- Throughout 2026, FOI Assist is hosting a series of live, online seminars exploring Ontario's Freedom of Information legislative framework.
- Each seminar will focus on practical tools and best practices to help FOI professionals improve their workflows and strengthen legislative compliance.
- Today's seminar is the first in the series.
- Five more will follow throughout 2026.
- Future seminars and registration information will be announced via the FOI Assist Knowledge Base
 - (Everyone attending today should already be an FOI Assist Knowledge Base subscriber.)

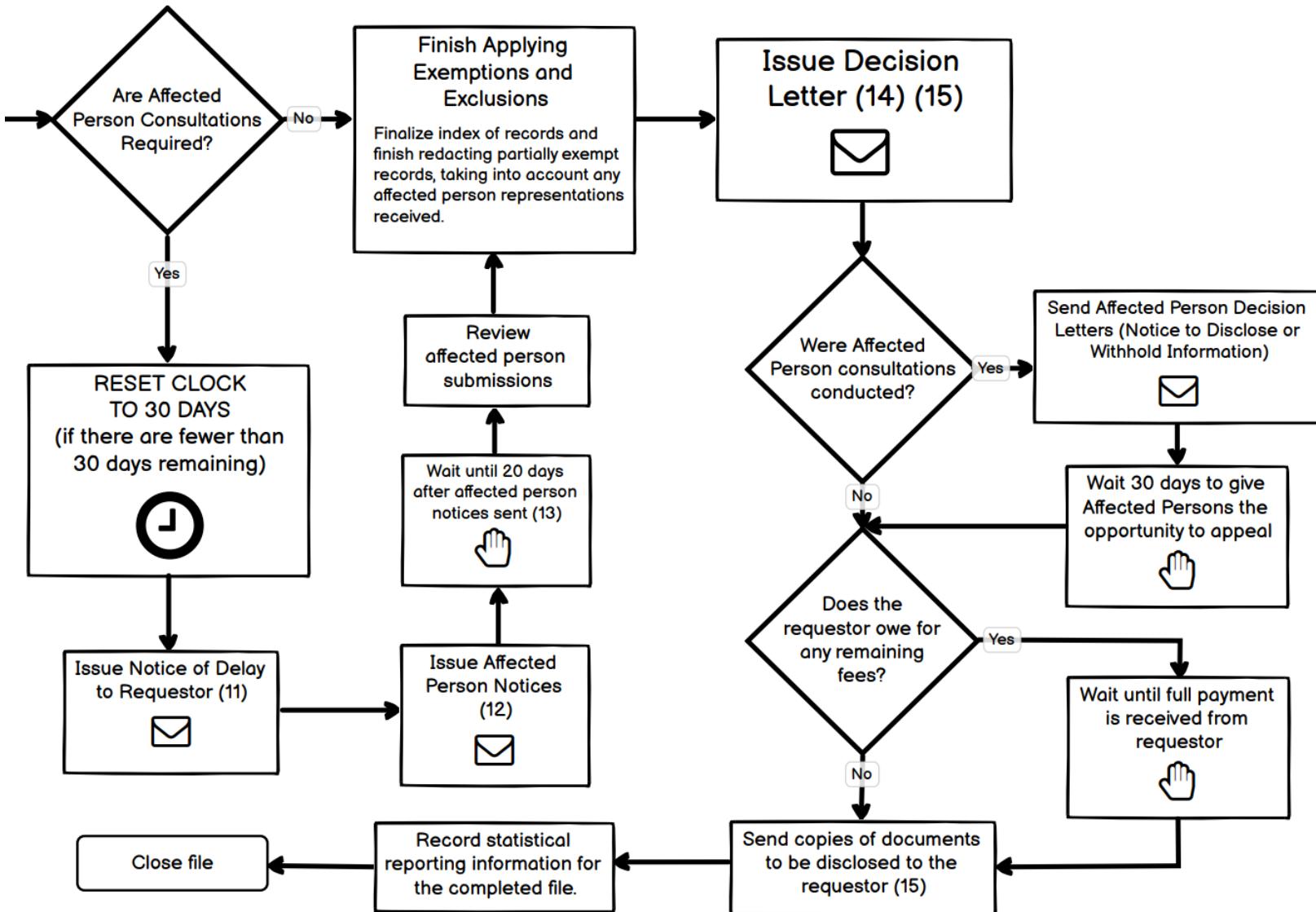
Introduction to the FOI Assist Seminar Series

- You will receive a link to the **post-seminar quiz**.
- Please submit the quiz to confirm your name and attendance.
- Participants will receive:
 - A Certificate of Attendance for those who attend and submit the quiz, or
 - A Certificate of Completion for those who attend and pass the quiz.
- Participants will also earn credit toward the **FOI Practitioner Certificate — FOI Assist Seminar Series (2026)**
 - The **FOI Practitioner Certificate** is awarded to FOI Assist Knowledge Base subscribers who complete five or more seminars during the 2026 calendar year.

Third Party Information & The Affected Person Process

Third Party Information & The Affected Person Process

- These are “Two Sides of the Same Coin”
- The Third Party Information exemption is the legal test for withholding
- The Affected Person Process is the procedure for using the Third Party Information exemption (and the Personal Information exemption)
- The Third Party Information exemption is about the content of the records and what is protected from disclosure
- The Affected Person Process is the process by which the records are withheld or disclosed



Third Party Exemption – Overview

Third Party Information & The Affected Person Process
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Third Party Information – Purpose

- The Third Party Information exemption exists:
 - to protect the interests of third parties, and
 - to encourage information sharing with the government.
- Without this exemption, companies would be much more hesitant to provide information to the government and might not want to bid on projects.

Third Party Information Exemption – Overview

- The Third Party Information exemption stands apart from many of the other exemptions:
 - It's relevant to just about every institution and FOI professional
 - It's invoked fairly often (compared to many other exemptions)
 - It's more complicated than most other exemptions, due to
 - a relatively large volume of applicable cases, decisions and guidance
 - the requirement to employ the Affected Person Process

Third Party Information Exemption – Overview

- A mandatory exemption subject to the Public Interest Override
- Protects confidential information supplied by a third party.
- The “third party” may be:
 - A business (including vendors)
 - An individual
 - A group or committee
 - An organization or institution
- Employees of the institution and other institutions covered by FIPPA/MFIPPA are not considered “third parties” for the purposes of this exemption (per the FOI Manual)

When Should You Think “Third Party Information”?

Ask yourself:

- Did this come from a vendor, consultant, or external party?
- Would disclosure harm their competitive position or business interests?
- Was it provided with an expectation of confidentiality?

Third Party Information Exemption – Overview

- The language of the Third Party Information exemption is set out in FIPPA s.17 and MFIPPA s.10
- Helpfully, the language of the exemption is nearly the same in both Acts

FIPPA Version

Third Party Information

17 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, **where** the disclosure could reasonably be expected to,

- (a) prejudice significantly the Third Party Information exemption position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

MFIPPA Version

Third Party Information

10 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, **if** the disclosure could reasonably be expected to,

- (a) prejudice significantly the Third Party Information exemption position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

FIPPA Version (con't)

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

MFIPPA Version (con't)

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Consent to disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Third Party Information – Mandatory + Public Override

- It is a mandatory exemption, which means the institution must not disclose any information to which this exemption applies.
 - In contrast, some other FOI exemptions are “discretionary”, which means the institution gets the option to withhold the records, but may choose to disclose them anyway.
- However, the Third Party Information exemption is also covered by the “public interest override”, which means information it covers may still be subject to disclosure if:
 - There is a compelling public interest; and
 - The compelling public interest clearly outweighs the purpose of the exemption.

Third Party Information – What is Protected?

- The Third Party Information exemption protects confidential information whose disclosure would harm the party who supplied it, namely:
 - Trade secrets
 - Scientific information
 - Technical information
 - Commercial information
 - Financial information
 - Labour relations information
- Institutions often receive this information through:
 - Legal or regulatory reporting
 - Procurement and bidding processes

Third Party Information – What is Covered

- The following three criteria must be met:
 1. Information must be a **trade secret, scientific, technical, commercial, financial, or labour relations information**.
 2. Information must be supplied by a third party, and **supplied in confidence**.
 3. Disclosure could reasonably be expected to cause one of the **relevant harms**.
- If any part fails, the exemption does not apply.

ALL THREE must be met:

1. Type of information
2. Supplied in confidence
3. Relevant harm

Third Party Information – Types of Information

- **Trade secret**

Confidential business information with economic value, such as algorithms, formulas, proprietary processes, software or hardware systems.

- **Scientific**

Information relating to natural, biological, or social sciences or mathematics, involving hypothesis testing or expert analysis. Examples: research results, raw data analysis, chemical testing.

- **Technical**

Applied sciences or mechanical arts, often prepared by professionals. Examples: engineering drawings, architectural plans, construction specifications.

Third Party Information – Types of Information

- **Commercial**

Information relating to buying, selling, or exchange of goods and services. Examples: pricing, tenders, marketing strategies, client lists, business proposals.

- **Financial**

Information relating to money or finance. Examples: accounting methods, financial statements, pricing practices, sales revenues, tax information.

- **Labour relations**

Information relating to collective bargaining or employer-employee relations. Examples: pay equity plans, dispute strategies, effects of HR policies.

Third Party Information – Must be “Supplied”

- Information is “supplied” if:
 - It is provided directly by the third party
 - It is not subject to negotiation or change
 - Disclosure would reveal or permit inference about the third party information
- Examples of supplied information:
 - Information required by statute
 - RFP submissions
 - Technical or product information included in schedules
 - Test results submitted by a vendor

Third Party Information – Must be “Supplied”

- Information is not “supplied” when:
 - The government institution generates it
 - It is jointly created
 - It is the result of negotiations
 - It is merely information about the third party

Third Party Information – What Is Not “Supplied”?

- Inspection reports prepared by institutional staff
- Project status reports
- Negotiated agreements
- Evaluation information created by the institution (except where it reproduces supplied content)

Deep Dive: Negotiated Contracts Aren't “Supplied”

- The contents of a contract involving an institution and a third party will not normally qualify as having been “supplied” for the purpose of section 10(1).
- The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” for the purpose of section 10(1).
- Past IPCO orders have, in general, treated the provisions of a contract as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation, or where the final agreement reflects information that originated from a single party.
- This approach was approved by the Divisional Court in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*.

(Source: IPCO Order MO-4671)

Deep Dive: Negotiated Contracts Aren't “Supplied”

- So, contracts are usually not considered “supplied” because they are mutual agreements.
- But two exceptions apply:
 - **Inferred disclosure:** releasing the contract would reveal underlying confidential information supplied by the vendor.
 - **Immutability:** information in the contract that was supplied by the vendor and not open to negotiation (such as fixed price lists or technical specifications).

Third Party Information – “Supplied In Confidence”

- The third party must have had an expectation of confidentiality at the time of supply.
- The expectation can be explicit (confidentiality markings, clauses, instructions) or implicit.
- That said, a mere claim of confidentiality is not determinative.
 - Especially if the claim is only made after the FOI request is received
- Even confidentiality markings aren't determinative.
 - Were the documents truly treated as confidential?
 - Has the institution shared them before? (Did the supplier know?)

Third Party Information – “Supplied In Confidence”

- Factors for assessing confidentiality include:
 - Limited access and need-to-know restrictions
 - Security and recordkeeping practices
 - History of treating the information as confidential
 - Whether the information is publicly available
 - Whether it was protected from competitors
 - Whether it was created for a purpose inconsistent with disclosure
 - Whether the information reveals negotiation details

Third Party Information – Relevant Harms

- The relevant kinds of harm are as follows:
 - **Significant prejudice to competitive position**
 - **Interference with contractual or other negotiations**
 - **Would cause similar information to no longer be supplied**
 - Notably, this is a harm to the institution or the public, not just the third party
 - But merely claiming it might become “less likely” is not enough
 - **Undue loss or gain to any person or group**
 - For example, would the disclosure give a competitor an undue gain?
 - (What other kinds of undue loss might a party face?)
 - **Reveal information provided in a labour dispute**
 - **Tax information (FIPPA only)**

Third Party Information – Harm to Competitive Position

- When assessing **harm to competitive position** and **undue loss/gain**, consider:
 - Is the industry competitive?
 - Was significant time and expense invested in developing the information?
 - Is the information critical to the success of the business?
 - Would the information be very useful to a competitor?
 - Does it provide specific price breakdowns?
 - Has the passage of time reduced the harm of disclosure?

The Affected Person Process – Basis and Purpose

Affected Person Process

- If a Freedom of Information request involves records that might contain:
 - Third Party Information
 - Personal Information

Then the institution must notify the affected person (or organization) and involve them in the disclosure process

- “Might contain” is a low bar. If the third party might consider it third party information or personal information, err on the side of involving them.

Affected Person Process

- The **Affected Person Process** is limited to records which may contain **Third Party Information** (under FIPPA s.17 / MFIPPA s.10) or whose disclosure may result in an **unjustified invasion of personal privacy** (under FIPPA s.21 / MFIPPA s.14).
- The requirement to perform the Affected Person Process is set out in FIPPA s.28 and MFIPPA s.21.
- FIPPA and MFIPPA establish substantively identical Affected Person Process procedures.

Affected Person Process – Why?

- The Affected Person Process serves at least three purposes:
 1. Notifies the Affected Person that the records are subject to an FOI request.
 2. Gives the Affected Person a chance to explain the potential harm of disclosure, or alternatively to consent to the disclosure of the records.
 - The Affected Person may have a valuable perspective on the records, and may be in a better position than the institution to make arguments regarding whether the records should be disclosed
 3. Notifies the Affected Person of their right to appeal the disclosure decision and informs the Affected Person as to how to file an appeal.
 - In some sense, the Affected Person's appeal right arguably “lets the institution off the hook”.

Conducting the Affected Person Process

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Affected Person Process – Step by Step

- Identify potentially affected records
- Send Affected Person Notices
- Wait 20 days for representations
- Review + make disclosure decisions
- Send decision letters
- Hold records for 30 days
- Disclose (if no appeal)

Affected Person Process: Timeline at a Glance

- **Day 0** – Issue Affected Person Notices
- **Day 1–20** – Representations from affected persons
- **Day 21–30** – Institution reviews + makes decision
- **Day 30** – Decision letters issued
- **Day 30–60** – Mandatory hold period
- **After Day 60** – Disclosure (if no appeal)

Processing an FOI request involving Affected Persons

1. Search for responsive records as usual
2. Assign each of your responsive records a document number
(This is always a best practice, but especially for the Affected Person Process)
3. Review the records and apply exemptions, noting any records that may affect the interests of third parties
4. Determine whether there are any records (or portions thereof) to be disclosed which might be covered by the Third Party Information exemption or the Personal Information Exemption
5. If so, issue **Affected Person Notices** to each of the Affected Persons and a **Notice to the Requestor** notifying the requestor of the 30-day Affected Person Process period
 - This is “**Day 0**” from the previous slide

Processing an FOI request with Affected Persons

6. Each affected person is given 20 days to provide representations regarding the proposed disclosure.
 - Typically, affected persons' representations will outline how disclosure could harm their interests.
 - Alternatively, affected persons may:
 - consent to disclosure
 - take no position
 - provide no representations.
7. After the 20-day representation period is over, the institution must review any representations received and arrive at a final disclosure decision for the records
 - The decision rests with the institution, which must independently assess whether disclosure is appropriate (it's not up to the third parties!)

Processing an FOI request with Affected Persons

8. After the 20-day representation period, but on or before the last day of the 30-day Affected Person Process period, the institution must send individualized **Decision Letters** to the Requestor and to each of the Affected Persons
9. Then, a minimum of 30 days after the Affected Person Decision Letters have been sent, the records can be disclosed to the requestor.
 - This 30-day holding period is intended to give Affected Persons the opportunity to appeal the institution's disclosure decision

Preparing Affected Person Notices

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Affected Person Notices

- The purpose of an Affected Person Notice is to let an affected person know that:
 - Information they have previously supplied to the institution is the subject of an FOI request and may be disclosed to a requestor
 - The Affected Person has 20 days to provide representations on why the relevant records should or should not be disclosed
- The Affected Person Notice also identifies which specific records (or portions thereof) may potentially be disclosed to the requestor
- The identity of the requestor is not relevant and should not be included in the notice or shared with affected persons

Affected Person Notices

- If you are drafting Affected Person Notices manually, you can start with the template in the FOI Manual
- Also refer to the IPCO Interpretation Bulletin dated March 2024 entitled “Third Party Information” for updated guidance
- Make sure to track the date on which each notice was sent
 - In the best case, all letters should be sent out on the same day
- Generally, Affected Person Notices should describe and/or enclose a copy of all records related to the affected person that are potentially being disclosed to the requestor
 - I favour enclosing copies of the records, so that it’s absolutely clear what might be disclosed
- Each Affected Person Notice must inform the affected person that they have 20 days to provide representations regarding the proposed disclosure of the identified records

Affected Person Notices

- Include the document number for every record sent to each Affected Person in the notice itself (typically in the “enclosure” section).
 - This will allow the institution to quickly confirm which records were sent to each affected person later without having to go through each attachment
 - It can also improve the quality of the response from the affected persons as they will be more likely to cite specific document numbers
- Some institutions take this to the next level and include an “index of records” in the affected person notice identifying the record number as well as the date and title or description of each record.
- It can be helpful to include relevant sections of the legislation too

Affected Person Notices: Need to Redact?

- In most cases, the records themselves were supplied by the affected person, so redaction will be unnecessary.
- That said, in some cases, third party information may have been inserted into a larger record, perhaps alongside the third party information of other affected persons, or alongside other information the institution cannot or does not wish to disclose to the affected person.
- In this case, you may need to redact the record so that only the portion of the record containing the information that the affected person supplied to the institution is visible

Tips for Affected Person Notices

- When deciding whether to include a document in an affected person notice, there's no need to include documents that will be withheld regardless
 - If you are already certain that documents will be withheld on the basis of another exemption, you don't have to send them to the affected person
 - That said, make sure to include the Third Party Information exemption alongside the other exemptions cited in your index of records to preserve your rights in any appeal
- However, if the Third Party Information exemption is the only exemption being cited to withhold a record, you should send an affected person notice for that record, even if you are fairly certain you will be withholding it.
 - Keep in mind, the affected person may consent to the disclosure of the record.
 - Otherwise, they sometimes provide helpful representations that help support your decision to withhold the record.

Affected Person Notices: Personal Information

- Different considerations may apply for personal information
- When the disclosure of Personal Information is at stake:
 - Affected parties are often less sophisticated
 - Decisions to withhold the personal information tend to be more clear-cut
 - Therefore, institutions are more likely to simply withhold personal information rather than consult each affected individual
 - Therefore, the Affected Person Process isn't employed as routinely as it is for Third Party Information
- Of course, if personal information is potentially being disclosed, then the relevant individuals must be consulted!

Affected Person Notices

- If you are using FOI Assist to run your affected person process, it will
 - create compliant affected person notices automatically
 - include an appropriate index of records in each Affected Person Notice, and
 - keep track of when each Affected Person Notice was sent and to whom.



Notice to Affected Person for Third Party Information



File number

2025-05

File name

Cafeteria Renovations

Date received

2026-01-13

Wording of request

I would like a copy of all documents held by the Facilities Department regarding renovations of the cafeteria in 2024.

Status of Affected Person Notices:

Mark As Done

Affected Person	Initial Notice Status	Notice of Decision Status	Remove person
Mary Maclemore	Sent Jan. 26, 2026	Not Sent	Remove affected person
Wendy Burger	Not Sent	Not Sent	Remove affected person
Requestor	Notice of Delay - Not Sent	Decision Letter - Not Sent	

[Prepare New Notice to Affected Person for Third Party Information](#)

[Prepare New Notice to Affected Person for Personal Information](#)

[Prepare Notice of Delay to Requestor \(due to Affected Person Process\)](#)

Affected Person Details:

Select Contact

Create New

Given Name(s): *

Wendy

Family Name: *

Burger

Salutation:

Mrs.

Job Title:

Organization:

Street Address: *

555 Windy Lane

City: *

Barrie

Formatted Letter:

Monday, January 26, 2026

Wendy Burger
555 Windy Lane
Barrie, Ontario
L4N 9A9

Dear Mrs. Burger:

Re: Notice to Affected Person for Third Party Information (FOI File Number: 2025-05)

Pleasanton Valley District School Board has received a request for disclosure of records under the *Municipal Freedom of Information and Protection of Privacy Act* (hereinafter, the "Act"). According to section 21 of the Act, a third party whose interests may be affected must be given the opportunity to make representations to the head of an institution concerning disclosure of the records.

To successfully qualify for a third party exemption, all of the following three tests must be met:

- The information must fit within one of the specified categories of third party information: trade secret or scientific, technical, commercial, financial or labour relations information;
- The information must have been supplied by the third party in confidence, implicitly or explicitly; and
- The disclosure of the information could reasonably be expected to cause one of the harms indicated below:



Monday, January 26, 2026

Mary MacLemore
111 Franklin Blvd
Windsor, Ontario
N8W 3T6

Dear Miss MacLemore:

Re: Notice to Affected Person for Third Party Information (FOI File Number: 2025-05)

Pleasanton Valley District School Board has received a request for disclosure of records under the *Municipal Freedom of Information and Protection of Privacy Act* (hereinafter, the "Act"). According to section 21 of the Act, a third party whose interests may be affected must be given the opportunity to make representations to the head of an institution concerning disclosure of the records.

To successfully qualify for a third party exemption, all of the following three tests must be met:

- The information must fit within one of the specified categories of third party information: trade secret or scientific, technical, commercial, financial or labour relations information;
- The information must have been supplied by the third party in confidence, implicitly or explicitly; and
- The disclosure of the information could reasonably be expected to cause one of the harms indicated below:

Under section 10 of the Act, we must release these records unless the above conditions are met (subject to any other exemptions under the Act which may apply). For your reference, copies of sections 10 and 21 of the Act are set out below.

Please review the enclosed records. If you have concerns about the release of these records, please contact us, in writing, no later than **Tuesday, February 17, 2026** outlining your concerns. In order to support your claims against the release of the records or portions of the records, you must show how those records meet the third party criteria listed above. We will notify you in writing by Wednesday, February 25, 2026 about our decision regarding the release of the records.

Should you have any questions, please contact me by phone at 555-555-2321 or by email at justin@foiassist.ca.

We would appreciate you using the above-listed FOI file number in any further correspondence.

Pleasanton Valley District School Board
289 Rock Road
Pleasanton, Ontario N9P 9T9

Sincerely,

Justin Petrillo
FOI Coordinator
Pleasanton Valley District School Board

Enclosed records:

Doc #'s	# pages	Title/Description	Date / Date Range
1-8	12	Emails regarding Cafeteria Renovations	October 2024
9-12	20	Memos regarding Cafeteria Renovations	Jan 1, 2024 to September 1, 2024

Pleasanton Valley District School Board
289 Rock Road
Pleasanton, Ontario N9P 9T9

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Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56

Third party information

10 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Consent to disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Notice to affected person

21 (1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

Contents of notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Description

Pleasanton Valley District School Board
289 Rock Road
Pleasanton, Ontario N9P 9T9

(2.1) If the request covers more than one record, the description mentioned in clause (2) (b) may consist of a summary of the categories of the records requested if it provides sufficient detail to identify them.

Time for notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit.

Notice of delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will, within 10 days after the expiry of the time period for making representations under subsection (5), decide whether or not to disclose the record.

Representation re disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Extension of time

(5.1) If the time limit specified in subsection (5) presents a barrier, as defined in the Accessibility for Ontarians with Disabilities Act, 2005, to the person, the head may extend the time limit for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of making representations under that subsection.

Representation in writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within 10 days after the expiry of the time period for making representations under subsection (5).

Notice of head's decision to disclose

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(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within 30 days after the notice of decision is given, subject to subsection (8.1); and
- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within the time period specified in clause (a).

Extension of time

(8.1) If the time limit specified in clause (8) (a) presents a barrier, as defined in the Accessibility for Ontarians with Disabilities Act, 2005, to the person, the head may extend the time limit for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of appealing the decision under that clause.)

Access to be given unless affected person appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates appeals the decision to the Commissioner in accordance with clause (8) (a).

Personal information about deceased

(10) In the case of a request by the spouse or a close relative of a deceased individual for disclosure of personal information about the deceased individual, the person making the request shall give the head all information that the person has regarding whether the deceased individual has a personal representative and how to contact the personal representative.

Deemed references

(11) If, under subsection (10), the head is informed that the deceased individual has a personal representative and is given sufficient information as to how to contact the personal representative, and if the head has reason to believe that disclosure of personal information about the deceased individual might constitute an unjustified invasion of personal privacy unless, in the circumstances, the disclosure is desirable for compassionate reasons, subsections (1) to (9) apply with the following modifications:

1. The expression "the person to whom the information relates" in subsections (1), (5), (7), (8) and (9) shall be deemed to be the expression "the personal representative".
2. The expression "the person" in clauses (2) (a) and (b) shall be deemed to be the expression "the deceased individual" and the expression "the person" in clause (2) (c) shall be deemed to be the expression "the personal representative".

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289 Rock Road
Pleasanton, Ontario N9P 9T9

Preparing the Notice to the Requestor

Notice to Requestor

- This is a fairly standard letter which informs the requestor that the affected person process has been invoked
- If the decision letter was due in the next 30 days, the letter must inform the requestor that the decision letter deadline has been extended to 30 days out to give the institution time to run the affected person process (this is the Affected Person Process period)
- The Notice to Requestor typically will not provide any details about which affected persons are being consulted or which records are being sent for their review
- It's helpful to include relevant sections of the legislation here as well



Monday, January 26, 2026

Cathy King
Toronto Telegraph
10 Trune Avenue
Toronto, Ontario
M5X 1T1

Dear Ms King:

Re: Notice of Delay Where a Third Party's Interests are Impacted (FOI File Number: 2025-05)

I am writing regarding your access request under the *Municipal Freedom of Information and Protection of Privacy Act* (hereinafter, the "Act") received by our office on Tuesday, January 13, 2026.

The disclosure of the records may affect the interests of a third party.

Under section 21 of the Act, we are required to notify third parties whose interest may be affected by the disclosure of records. Third parties then have an opportunity to make representations about the release of the record(s).

This process requires the timelines for response to be adjusted. A decision on whether or not the record(s) will be disclosed will be made by Wednesday, February 25, 2026.

A copy of section 21 of the Act has been included for your information. Should you have any questions, please contact me by phone at 555-555-2321 or by email at justin@foiassist.ca.

We would appreciate you using the above-listed FOI file number in any further correspondence.

Sincerely,

Justin Petrillo
FOI Coordinator
Pleasanton Valley District School Board

Pleasanton Valley District School Board
289 Rock Road
Pleasanton, Ontario N9P 9T9

Third Party Information & The Affected Person Process
January 28, 2026

Preparing The Decision Letters

Third Party Information & The Affected Person Process
January 28, 2026



Affected Person Decision Letters

- Decision letters to affected persons list only the records previously sent to them, along with the institution's decision to disclose, withhold or partially disclose.
- Copies of the records are not typically enclosed at this point
- Rather, an index of records and/or a description of which records are being disclosed is typically included instead.
- That said, the institution may wish to include copies of any records being partially disclosed if necessary to make clear exactly what is to be disclosed.

Affected Person Decision Letters

- The Affected Person Decision letters must inform the affected persons of their right to appeal within 30 days of receiving notice of the decision
- Remember to use IPCO's online appeal language:

*You may request the Information and Privacy Commissioner to review this decision within thirty days from the date of this letter. You can do so by filing an appeal online at www.ipc.on.ca. The appeal fee is **\$25.00** (for general record requests) or **\$10.00** (for personal information requests). Alternatively, appeals can still be mailed with a cheque or money order payable to "Minister of Finance" to: Registrar, Information and Privacy Commissioner of Ontario, 2 Bloor Street East, Suite 1400, Toronto, ON, M4W 1A8.*

- Current FOI Manual templates are “out of date” on this (and some IPCO guidance documents are as well)

Decision Letter to the Requestor

- The decision letter to the requestor is a typical decision letter, except that it should include language to the effect that the records are being held for an additional 30 days in order to preserve the appeal rights of affected parties.

Disclosing the Records

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Disclosing the Records

- In a typical FOI request, the decision letter includes a statement of fees owing by the requestor, and once the fees are paid, the requested records are sent to the requestor, subject to any withholdings
- If no fees are owing (or if the institution waives all fees) the requested records may even be enclosed with the decision letter
- **HOWEVER**, if the institution has run the affected person process, this process is different.

Disclosing the Records

- The records must be retained by the institution for at least 30 days after the Affected Person Decision Letters were sent, to provide Affected Persons the opportunity to file an appeal to halt the disclosure of the records
- The IPCO is supposed to promptly inform the institution if they receive an appeal
- In practice, most institutions wait an extra 5-7 days on top of the 30 days, just to be safe

Why the 30-Day Hold Period Matters

- It's good practice to call the IPCO to confirm that no appeals have been filed before sending the documents out.
 - In fact, the practice of waiting an additional 5-7 days likely originates with the IPCO, who will typically inform institutions calling on the 31st day to wait a few more days before disclosing any records.
- Don't send the documents out early!
 - Premature disclosure is an irreversible breach.
 - IPCO's appeal jurisdiction depends on hold period.

Partial Disclosure?

- Often, the responsive document set includes both “affected” records and other records that do not affect the interests of third parties (“unaffected” records)
- An institution may disclose the “unaffected” records without waiting the 30 days, and then disclose the “affected” records after the 30 days
- Different institutions handle this differently (as it creates extra work)
- That said, in the case of an appeal by an affected person, IPCO will typically encourage the prompt disclosure any “unaffected” records in the disclosure set

The Affected Person Process – Tips for Success

Mistakes to Avoid

- Not tracking dates and what notices were sent
- Not sending relevant records to affected persons
- Not including document numbers in notices
- Disclosing the identity of the requestor
- Leaving out appeal language or legislative excerpts
- Using out-of-date language in FOI correspondence
- Disclosing records before the 30+ day hold period

Tips for Success

- The Affected Person process is your friend
- I once heard a former IPCO staffer explain: “If in doubt, send it out!”
- What this means is, if you’re on the fence about whether something is confidential, and you’ve notified the affected party, you have two choices:
 - Withhold the document, and potentially fight an appeal with the requestor
 - Notify the requestor and affected person of your decision to release the document, and let the affected person file an appeal if they wish to prevent its disclosure

Tips for Success

- That said, I have seen institutions take a very active role in resisting the disclosure of third party information, especially if the institution feels disclosing the records would:
 - affect its relationships with its vendors or be unfair to them
 - prevent similar information from being shared with government institutions in the future
- The institution certainly can certainly take an active role in any appeal as well
 - Usually, to defend its decision that records should not be disclosed
 - (This was my introduction to FOI roughly 20 years ago!)

Tips for Success

- Of course, if a document is covered by the Third Party Information exemption, don't release it. The exemption is mandatory.
- But if you find yourself in the middle of a dispute in which you have no real opinion, making the decision to disclose the document effectively lets the requestor and affected party resolve the dispute between themselves through the IPCO appeal process
- When there are affected parties for a request, you have to notify them of your decision to release the records that affect them
- There is then a 30-day waiting period before the documents are released to give the affected parties an opportunity to appeal your decision to the IPCO
- You don't have to play a very active role in that appeal if you have no opinion!

Next Steps

You will receive two separate emails:

- one later today with the link to the quiz, and
- another at a later date with information about the next seminar in the FOI Assist Seminar Series.

Please keep an eye on your inbox (and your junk/spam folder, just in case!)

Thank you for attending!

Justin Petrillo
President & Founder
FOI Assist Corporation

justin@foiassist.ca
<https://foiassist.ca>