



OFFICE OF THE  
INFORMATION AND PRIVACY  
COMMISSIONER  
OF ALBERTA (OIPC)

## ***Personal Information Protection Act (PIPA)***

### **A PIPA GUIDE FOR ORGANIZATIONS: UNDERSTANDING THE ROLE OF THE OIPC**

#### **PURPOSE OF THIS GUIDE**

This Guide is intended to help organizations that are subject to the *Personal Information Protection Act* (PIPA) learn what to expect in their interactions with the Office of the Information and Privacy Commissioner of Alberta (OIPC).

#### **THE PERSONAL INFORMATION PROTECTION ACT**

As of January 1, 2004, the collection, use and disclosure of personal information in the private sector in Alberta is governed by the *Personal Information Protection Act* (PIPA) and its Regulations.

The Act recognizes both the right of an individual to have his or her personal information protected and the needs of organizations to collect, use and disclose personal information for purposes that are reasonable.

Under PIPA, the Information and Privacy Commissioner for Alberta is responsible for overseeing the Act and ensuring compliance. The Commissioner is an Officer of the Legislature and is independent of government.

You may seek guidance from our staff regarding the applicability of PIPA to your organization. Additional information is available on the Commissioner's website at:  
<http://www.oipc.ab.ca/pipa/publications.cfm>

#### **GENERAL OVERVIEW OF COMMISSIONER'S RESPONSIBILITIES, FUNCTIONS AND AUTHORITY**

The Commissioner's role is laid out in Part 4 and Part 5 of the Act. The general responsibilities, specific powers, protections and confidentiality provisions are outlined in these sections, as well as procedural requirements for investigations, mediation and inquiries.

The Commissioner is responsible for monitoring how PIPA is administered to ensure its purposes are achieved. The Commissioner's authority under s. 36 includes investigating compliance complaints, initiating investigations, informing the public, inviting comments on the Act, commissioning research and advising organizations on their obligations.

The Commissioner has the power to review the collection, use and disclosure actions and decisions of organizations under PIPA. For example, the Commissioner can review or investigate:

- any decision, action or failure to act by an organization that has been asked to give access to or to correct personal information,
- a claim by an individual that his or her personal information has been improperly collected, used or disclosed, or
- a complaint about an organization not properly helping an applicant, about the time taken to respond to a request, or about the fees charged (s. 36(2)).

The Commissioner can also:

- refer an individual to another grievance, complaint or review process (s. 46(3)),
- give an advance ruling on a matter that could be investigated under the Act (s. 36(3)),
- authorize mediation or investigation to settle a complaint (s. 49),
- hold an inquiry (s. 50),
- issue Orders that are binding (s. 53),
- allow an organization to take more time to respond to an individual's request for personal information (s. 31), and
- authorize an organization not to respond to requests in certain situations (s. 37).

Section 36 of the Act authorizes the Commissioner to initiate investigations regardless of the existence of a request for review or complaint. The Commissioner has the full authorities provided by s. 38 to conduct investigations as if a complaint had been made.

### **OUR REFERRAL PROCEDURE**

An individual may make inquiries to the OIPC on whether an organization's personal information practices are compliant with PIPA. However, if the individual has not already attempted to resolve the dispute with the organization, the OIPC may refer the individual back to the organization, or to an alternative dispute resolution process subscribed to by the organization (e.g. its business sector association).

In most cases, organizations have the first chance to settle a dispute. Nevertheless, if the individual is alleging unauthorized destruction of documents, or if an adversarial relationship exists with a current employee, the Commissioner may decide to take the complaint directly.

The OIPC expects that organizations will prefer to resolve privacy complaints and maintain goodwill. A complaint does not have to be a negative experience. Often, the "complaint" can turn out to be a request for information about the organization's personal information practices. Complaints can bring attention to matters such as:

- customers finding it difficult to locate privacy policies on a website, or
- not being able to understand the information provided.

Organizations may find it helpful to monitor such complaints and information requests, as they can provide useful feedback on what customers or employees see as "reasonable" uses of their personal information.

## **WHAT TO EXPECT WHEN A REQUEST FOR REVIEW OR COMPLAINT HAS BEEN MADE**

When a written request for review or complaint is received by the OIPC, a Portfolio Officer is assigned to handle the case unless and until it proceeds to inquiry. When the file is initially opened, the Portfolio Officer contacts the individual and the organization, usually by telephone, to advise that the complaint or request for review has been received. The Portfolio Officer then sends an official notification of receipt of the request to the individual and the organization.

If the complaint is a request for review, the Portfolio Officer will give the organization a copy of the individual's request for the Commissioner's assistance. A copy of any complaint form or letter may also be included, although the Portfolio Officer may sever confidential information.

### **CONFIDENTIALITY**

As part of an investigation, the Portfolio Officer may request documents and information from both the individual and the organization. Under s. 38 of the Act, the Commissioner has the authority to compel production of documents within ten days, but in practice this power is seldom used. It is in the interests of organizations to cooperate fully and be forthcoming.

All OIPC staff operates under strict confidentiality provisions (s. 41 of PIPA). The Portfolio Officer may recommend that the organization release documents to the individual. If the organization disagrees with the recommendation and if the case proceeds to inquiry, an Order might compel the organization to release the records. At no time will the OIPC disclose documents.

Both organizations and individuals have the opportunity to provide written and verbal information to the Portfolio Officer in confidence or without the other party being present.

### **SINGLE POINT OF CONTACT**

The Portfolio Officer assigned to the case is the single point of contact in the OIPC unless and until the case proceeds to inquiry. The OIPC also expects the organization to provide a single point of contact.

OIPC requests for documents and information will be provided to the privacy contact with the expectation that the documents and information will be obtained from the appropriate source within the organization.

The participation of an organization's privacy contact, who is both well informed about the PIPA and the organization, is important in timely resolution of disputes.

### **MEDIATION/INVESTIGATION**

The OIPC prefers to resolve disputes through informal fact-finding, mediation and education processes. The goal of mediation is to attempt to identify resolutions that balance an individual's personal information rights with the need of the organization to carry out its business in a reasonable manner. If the dispute can be resolved in mediation, there is no need to proceed to the formal adjudication stage (an inquiry).

At the end of a successful mediation the Portfolio Officer obtains verbal agreement about the resolution and writes to the individual and the organization outlining the agreement, and giving both parties the opportunity to refute matters of fact within a specified timeframe. If both parties agree, the complaint is closed.

In mediation, neither side should need a lawyer. The process is free of cost.

At the end of an investigation, the Portfolio Officer may publish an Investigation Report that names the organization. Published Investigation Reports are posted on the OIPC's website, and are accompanied by a media release.

### **INQUIRIES AND ORDERS**

If a dispute is not resolved in mediation, the matter may proceed to the formal adjudication stage (an inquiry). The Commissioner has discretion to decide to proceed to inquiry. If the matter goes forward, the original Portfolio Officer will no longer be involved; both parties will deal with different staff from the OIPC to ensure impartiality in the process. When hearing inquiries, the Commissioner operates in a quasi-judicial capacity; strict procedures must be followed to ensure that concepts of administrative justice and fairness are met. Inquiries may be conducted with written submissions or heard orally. Organizations may use a lawyer to prepare or review their submissions, and sworn affidavits may be required.

Unless the individual withdraws from the dispute, or the matter is settled between the parties, an inquiry will lead to an Order. An Order is a written decision to the parties. If the Order requires the organization to do or stop doing something, the organization must follow that Order.

Orders are made available to the public and identify the organization. If the matter decided by an Order provides new precedent, the case may also be described in the Commissioner's Annual Report to the Legislature.

Orders are final under s. 53 and enforceable under s. 52(6). Organizations have 50 days to comply with an Order.

If the Commissioner should find that there is foundation for the complaint, s. 60 of the Act gives the individual a right to pursue damages through the courts. The OIPC is not a party to court actions for civil damages; the Commissioner's involvement ends with the Order and monitoring compliance with the Order.

### **OFFENCES AND PENALTIES**

Section 59 sets out the offences and penalties under PIPA.

Offences are actions such as wilful contravention of the Act, obstruction of or making false statements to the Commissioner and delegates and failure to comply with an Order. Offences may result in fines up to \$10,000 for individuals to \$100,000 for organizations.

### **OTHER OIPC PROCESSES FOR PIPA ORGANIZATIONS**

While the focus of this document has been on how organizations and the OIPC respond to disputes about personal information, there are other processes under PIPA that may be of interest to organizations.

Section 31 of the Act outlines the circumstances under which an organization may extend the timeframe for responding to a request for access to personal information. If the Commissioner's permission is required, organizations should apply for the extension before time has expired and will be required to demonstrate why the extension should be granted.

PIPA also provides relief to organizations when individuals misuse the Act. Under s. 37, organizations may apply to the Commissioner to disregard one or more requests for access to or correction of an individual's personal information if the requests:

- are repetitious or systematic and would unreasonably interfere with the operations of the organization,
- amount to an abuse of the right to make such requests, or
- are frivolous or vexatious.

### **CONTACT INFORMATION**

The OIPC can be contacted regarding PIPA matters by mail, telephone or fax at:

Office of the Information and Privacy Commissioner of Alberta  
Suite 2460, 801 – 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 3W2

Phone: (403) 297-2728  
Fax: (403) 297-2711  
Toll Free: 1-888-878-4044