



## **INQUIRY PROCEDURES**

For inquiries under the *Freedom of Information and Protection of Privacy Act*, the *Health Information Act* and the *Personal Information Protection Act*, these procedures are designed to streamline the inquiry process and make it more efficient. They are effective October 14, 2009.

### **Address for service/Contact information**

All parties, including the party who initiated the complaint or requested the review, must provide a current address for service to the Commissioner and to each other for the exchange of written inquiry submissions and correspondence. A current address for service may include a post office box number or work address, or the contact information of the party's agent. All parties must also provide written notice to the Commissioner and to the other parties of any changes to their address for service using the *Change of Contact and/or Address for Service* form available on the Commissioner's Office website.

If any party fails to provide a current address for service or fails to give notice of changes to the address for service, the Commissioner will decide whether to proceed with the inquiry.

### **Exchange of written inquiry submissions and correspondence**

The Commissioner does not exchange written inquiry submissions on behalf of the parties to an inquiry, except in exceptional circumstances. Parties are now responsible for exchanging their own written inquiry submissions with the other parties named in the Notice of Inquiry. They are also responsible for sending each other a copy of any correspondence sent to the Commissioner's Office during an inquiry.

All parties must provide two paper copies of their written inquiry submissions to the Commissioner unless otherwise specified in the Notice of Inquiry.

### **Sequence for exchange of written inquiry submissions**

The party who initiated the complaint or requested the review by the Commissioner (for example, the complainant who brought a privacy complaint, the applicant who requested access to information, or the third party who requested a review) must first provide that party's written inquiry submission to the Commissioner and to the other parties named in the Notice of Inquiry. After receiving that party's written inquiry submission, the other parties must next provide their written inquiry submissions to the Commissioner and to each other.

The party who initiated the complaint or requested the review may then rebut the other parties' written inquiry submissions, after which the other parties may rebut that party's rebuttal submission.

The Commissioner may also ask for further written inquiry submissions.

If the party who initiated the complaint or requested the review fails to first provide the party's written inquiry submission to the Commissioner and to the other parties, the Commissioner will decide whether to proceed with the inquiry.

### ***In camera* written inquiry submissions**

A party's *in camera* written inquiry submission is received only by the Commissioner and, if accepted by the Commissioner, is not exchanged with the other parties. Consequently, in the interests of conducting a procedurally fair inquiry, an *in camera* written inquiry submission is accepted only when:

- the submission reveals the contents of the "records at issue" (see below);
- the Acts set out above otherwise require that information not be disclosed; or
- the circumstances of the particular case require that information not be disclosed.

A party who wants to provide an *in camera* written inquiry submission to the Commissioner must apply to the Commissioner. The party applying to the Commissioner must:

1. Set out the party's reasons for requesting that the Commissioner accept the party's *in camera* written inquiry submission;
2. Deliver those reasons to Commissioner and to the other parties who are named in the Notice of Inquiry;
3. Provide the Commissioner with evidence that the party sent the reasons to the other parties; and
4. Provide the Commissioner with the *in camera* written inquiry submission.

The Commissioner will then decide whether to accept or refuse to accept the party's *in camera* written inquiry submission.

Before making a decision about an *in camera* written inquiry submission, the Commissioner will decide whether to give the other parties an opportunity to make representations.

If the Commissioner refuses to accept all or part of a party's *in camera* written inquiry submission, the Commissioner will return that submission to the party, and may provide instructions to the party.

### **Records at issue**

The Commissioner will accept the "records at issue" *in camera*, as the records at issue are records that the Commissioner can compel and are therefore not a submission or representation. The "records at issue" are the records or information that a public body, custodian, or organization has withheld from an applicant who requested access to the records or information.

## **Request extension of time for providing written inquiry submissions before due date has passed**

The Notice of Inquiry will set out the due date for written inquiry submissions.

A party who wants to extend the time to provide a written inquiry submission for up to 30 days after the due date set out in the Notice of Inquiry may do so if that party is able to obtain the consent of all the parties who are named in the Notice of Inquiry. Evidence of those consents should be provided to the Commissioner before the due date for the party's written inquiry submission as set out in the Notice of Inquiry, so that the Commissioner may revise the due date.

If consent cannot be obtained from one or more of the parties, or if a party wants to extend the time for providing a written inquiry submission for more than 30 days after the due date for that submission, the party must apply to the Commissioner to extend the time. The party applying to the Commissioner must:

1. Set out the party's reasons for requesting the extension of time;
2. Deliver those reasons to the Commissioner and to the other parties who are named in the Notice of Inquiry. Delivery must be no later than ten business days before the due date for the party's written inquiry submission, unless the party is successful in an application to the Commissioner to vary this time requirement (see *Request to vary inquiry procedures*, below);
3. Provide the other parties with a notice stating that
  - a) those parties may object to an extension of time; and
  - b) any objection must be delivered to the Commissioner and to the parties within three business days of receiving the party's reasons for requesting the extension of time; and
4. Provide the Commissioner with evidence that the party sent the reasons and notice to the other parties.

The Commissioner will then decide whether to allow or refuse an extension of time to provide a written inquiry submission.

## **Request to vary inquiry procedures**

Variations include (but are not limited to):

- Requests to provide a written inquiry submission after the due date for the submission has passed;
- Requests to provide an additional or extra written inquiry submission;
- Requests to vary from the normal submission exchange procedure;
- Requests to re-open inquiries that were discontinued by the Commissioner; and
- Other non-standard circumstances or processes.

A party who wants to vary these inquiry procedures must apply to the Commissioner. The party applying to the Commissioner must:

1. Set out the requested variation and the party's reasons for requesting the variation;
2. Deliver the requested variation and reasons to Commissioner and to the other parties who are named in the Notice of Inquiry;
3. Provide the other parties with a notice stating that
  - a) those parties may object to the requested variation; and
  - b) any objection must be delivered to the Commissioner and to the parties within three business days of receiving the party's requested variation and reasons; and
4. Provide the Commissioner with evidence that the party sent the requested variation, reasons and notice to the other parties.

The Commissioner will then decide whether to vary these inquiry procedures. The Commissioner's reasons for agreeing to or denying the request will be sent to all parties named on the Notice of Inquiry.

Without limiting the Commissioner, the Commissioner may, without any request from a party, vary these inquiry procedures in circumstances such as:

- a) when there are undisclosed affected parties whose information a public body, custodian, or organization has withheld from an applicant who requested access to the information or records; or
- b) when there is a general complaint about personal information or health information.

## **Communications**

During an inquiry, parties are asked to refrain from contacting or sending correspondence directly to the Commissioner or the delegated Adjudicator. All communications, whether generally or in response to a specific request, should be sent to the Registrar of Inquiries who will ensure it is logged and forwarded correctly.

It is not sufficient to speak to the Registrar when requesting information or action on the part of the Commissioner's Office. All requests must be in writing, and if they may affect the Commissioner's decision, they must be copied to all other parties identified on the Notice of Inquiry.

## **Interpretation**

In these inquiry procedures, "Commissioner" means the Commissioner or the Commissioner's delegated Adjudicator who is conducting the inquiry.