



Review and Investigation Procedures

The purpose of this document is to provide parties with a summary of the procedures under which reviews and investigations are conducted by the Office of the Information and Privacy Commissioner (OIPC) and the anticipated date for completion of the reviews and investigations.

Forms referenced in this document are available on our office's web site at www.oipc.ab.ca.

Commissioner's Mandate

The Commissioner is an independent Officer of the Legislature and reports directly to the Legislative Assembly. Through the OIPC, the Commissioner performs the legislative and regulatory responsibilities set out in the *Freedom of Information and Protection of Privacy Act* (FOIP Act), the *Health Information Act* (HIA) and the *Personal Information Protection Act* (PIPA).

What We Do...

- review the decisions of public bodies, health custodians, and private sector organizations in response to requests for access to information or correction of personal/health information made under the Acts
- investigate complaints regarding the collection, use or disclosure of personal or health information
- investigate any matter relating to the application of the Acts
- conduct inquiries and issue binding orders

What We Don't Do...

- act as an advocate on behalf of any party to a review or investigation
- release records that are the subject of a review
- store records on behalf of the Government of Alberta or any other party
- impose fines or award damages
- hear appeals of claims, benefits or decisions that do not fall under the Acts
- discipline, terminate or reinstate employees
- regulate the actions of individuals as private citizens
- regulate the constituency offices of members of the legislative assembly (but we do regulate access and privacy issues involving actions of cabinet members and ministries)

Overview of Proceedings

1. Intake and Case Review

Request for review or complaint is checked for:

- i. jurisdiction (is it something the OIPC can do under one of the three Acts?);
- ii. whether it was received by the OIPC within the required time limits; and,
- iii. whether there is evidence that substantiates the request for review or complaint.

If the OIPC proceeds with a review or investigation, a file is opened and an acknowledgement letter is issued to the Applicant/Complainant¹ and the public body/custodian/organization. A copy of the Request for Review/Complaint Form and any attachments to the Form are included with the letter.

Certain cases will be assigned to the Intake and Case Review Unit. These cases typically involve single issues that may be quickly resolved (e.g. no response to the request or missing records).

2. Review and Investigation

Once a case is accepted, it may first be assigned to an Investigator for a preliminary assessment. The investigator, who is known as a Senior Information and Privacy Manager, begins the investigation by reviewing the submission of the Applicant/Complainant and, in the case of a review of an access request, the records provided by the public body, health custodian or organization.

Many cases can be fully or partially resolved during this preliminary assessment; for instance, where the:

- case is not complex;
- case has few records or minimal severing;
- facts are not in dispute; or
- facts are easily determined.

These cases are dealt with relatively quickly and parties receive responses in the form of an email, phone call or letter.

When there are outstanding or complex issues that cannot be dealt with during the preliminary assessment, the investigator may refer the case to another investigator for further review and a report of finding. The initial review process, further response and report of findings can take up to 180 days and in some cases longer.

3. Inquiries

If a review or investigation does not resolve the issues, the Applicant/Complainant may request an inquiry.

Inquiries are formal adjudicative proceedings. The inquiry process is not an examination of the process or an evaluation of the findings and recommendations made during the review and investigation process. The inquiry gives the parties an opportunity to present their evidence “de novo” (from the beginning) and to rebut or support evidence presented by the other party.

The Commissioner may refuse to conduct an inquiry in certain circumstances:

- the subject matter has been dealt with in an order or investigation report of the Commissioner; or
- the circumstances warrant refusing to conduct an inquiry (for instance, if there is no meaningful remedy).

A decision to refuse to conduct an inquiry will be issued to the parties in writing.

¹ Please see the end of this document for definitions.

If the Commissioner decides to proceed with an inquiry, a Notice of Inquiry will be issued to the parties. The Notice of Inquiry will confirm the issues for the inquiry and the schedule for the required submissions. The Notice of Inquiry will include a copy of the Request for Review/Complaint Form and attachments and a copy of the Request for Inquiry.

Note: Under the FOIP Act and HIA, a complaint that is not about the Complainant's own personal/health information, cannot proceed to inquiry.

4. Affected Parties and Intervenors

Some inquiries may include "affected parties". An affected party is any other party who, in the opinion of the Commissioner, is affected by the request for review or complaint. A copy of the Request for Review/Complaint Form and attachments and the Request for Inquiry Form may be provided to the affected party.

An affected party may make representation to the Commissioner at inquiry, but is not required to participate.

In certain cases, the Commissioner may give intervenor status to parties if the Commissioner determines it is appropriate. An intervenor can be useful in bringing a broader perspective to issues than the parties involved.

5. Order

On completing an inquiry, the Commissioner or delegated Adjudicator must issue an Order disposing of the matter.

An Order made by the Commissioner or delegated Adjudicator is final. However, a party may apply to the Court of Queen's Bench of Alberta for judicial review of an Order.

Making a Request for Review or Complaint to the Commissioner

Under the Acts:

- An Applicant may ask the Commissioner to review any decision, act or failure to act by the public body, custodian or organization that relates to an Applicant's access to information request or request for correction.
- A Complainant may ask the Commissioner to investigate if he/she believes that personal/health information has been collected, used or disclosed in contravention of the Acts.
- A third party who has been notified by a public body under the FOIP Act that its information will be given to an Applicant may ask the Commissioner to review that decision.

An Applicant/Complainant must complete and submit a Request for Review/Complaint Form to the OIPC within the following timelines:

FOIP and HIA

- Within 60 days after he/she is notified of the decision by the public body or custodian (FOIP and HIA) or become aware of an incident involving the collection, use and disclosure of personal/health information.

PIPA

- Within 30 days from the day that he/she is notified of the decision by the organization (PIPA). [Note: incidents involving the collection, use and disclosure of personal information under PIPA must be delivered to the Commissioner within a reasonable time period]

The Commissioner may allow for reviews or complaints to be submitted outside of the time limits above, based on the circumstances.

A **third party** must complete and submit a Request for Review/Complaint Form to the OIPC within 20 days after being notified by a public body of its decision to give an Applicant access to third party information. The Commissioner has no power to allow a third party a longer period than 20 days to submit a request for review.

Request for Review/Complaint Form and attachments required to be disclosed

A copy of the Request for Review/Complaint Form, and accompanying attachments, will be provided to the public body/custodian/organization and to anyone else the Commissioner believes is affected by the request.

Applicants and Complainants must identify to the OIPC if there is specific information in the Request for Review/Complaint Form or accompanying attachments that should not be disclosed. Requestors must also provide an explanation as to why the information cannot be disclosed. The Commissioner will decide whether to disclose the information.

Address for Service

Each party must provide an Address for Service to which all official communications will be sent for the purposes of the review/investigation.

Applicant/Complainant

The address for service is to be identified on the Request for Review/Complaint Form.

Public Body/Custodian/Organization

The Address for Service of the public body/custodian/organization will be identified on the Acknowledgement letter that the OIPC sends to each party as part of initial notification process (see "Notice").

Changes or Updates

A party must use the Change of Contact and/or Address for Service Form to change its Address for Service at any time during the review/investigation.

The Address for Service of each party will be circulated to all other parties.

Timelines

Under the FOIP Act and HIA, the Commissioner is to complete a review within 90 days after the OIPC received the request for review/complaint unless that period is extended by the Commissioner.

PIPA allows the Commissioner to complete a review/investigation within one year from the day that the request for review/complaint was received by the OIPC. PIPA also allows the Commissioner to extend that period.

Parties will be notified as to the anticipated date for completion and any extensions to the anticipated date for completion.

Definitions

Applicant – a person who makes an access to information request or a request for correction of their personal/health information.

Complainant – a person who believes his/her personal or health information has been collected, used or disclosed in contravention of one of the Acts.

Custodian – health entities subject to HIA.

Organization – private sector entities subject to PIPA.

Public Body – public sector entities subject to the FOIP Act.

Third Party – a person, a group of persons, or an organization other than an Applicant or a public body.

If you have any questions with respect to the OIPC review/investigation process, please contact:

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