



POLICIES AND PROCEDURES

I. GENERAL

The Commissioner has established Policies and Procedures to advise members of the public and public bodies covered by the Act how he will be guided in exercising his duties and authorities under the *Freedom of Information and Protection of Privacy Act* (“Act”). These Policies and Procedures cover the most commonly used sections of the Act, and those sections where it was determined that more specific procedural direction was required.

For all complaints and requests for review, the Commissioner’s overriding policy is to encourage the parties to resolve the issues by settlement. The Commissioner’s staff are authorized to attempt mediation of all matters before they are referred to the Commissioner.

Section 10 – Extending the time limit for responding

Section 7 of the Act provides that, subject to sections 23 and 24 (1) (notice to a third party), a public body must respond to a request for records within 30 business days unless:

- the time limit is extended under section 10,
- the public body transfers the request to another public body under section 11,
- the public body applies under section 43 of the Act to the Commissioner for authorization to disregard the request,
- the public body issues a fee estimate,
- the applicant requests a review relating to a fee or
- a third party asks for a review.

Section 10(1) of the Act provides:

The head of a public body may extend the time for responding to a request for up to 30 business days or, with the Commissioner's permission, for a longer period if:

- (a) the applicant does not give enough detail to enable the public body to identify a requested record,
- (b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body or
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to the requested record.

Intake Officers and Portfolio Officers, by delegation, exercise the Commissioner's authority to grant permissions under section 10.

Procedure

1. A public body may exercise its own discretion to extend the original 30 business day time period for responding to a request for up to 30 additional business days, if the reasons for taking the extension meet the criteria outlined in section 10.
2. If a public body exercises its own discretion under para. 1 to take a time extension of up to 30 additional business days and then determines, within that extended time, that it will need more than 60 business days to respond to a request, it may request permission from the Commissioner for a further extension.
3. If a public body determines, within the original 30 business day time period for responding to requests, that it will need more than 60 business days to respond to a request, it may request permission from the Commissioner to extend for a longer time period.
4. The Commissioner will not consider a request under para. 2 or 3 after the original or, if applicable, extended time period has expired.
5. In requesting permission from the Commissioner under section 10(1) for an extension of longer than 30 business days, a public body must provide, as applicable, the following information to the Commissioner in writing at the time of its request:
 - the public body's file number for the request for records,
 - a brief description of records requested,
 - the date the public body received the request,

- the date the public body sent fee estimate and date fees or fee deposit paid or waiver requested and granted/denied,
- the date the public body sent notice to a third party under section 23 and date any response was received,
- the date the public body took its own time extension,
- the date current response time expires,
- any relevant correspondence to the applicant respecting previous extensions,
- the reasons for requesting a time extension and should include, if applicable:
 - (i) the approximate number of pages of records requested or that must be searched,
 - (ii) an explanation of how meeting the current time limit would unreasonably interfere with the operations of the public body,
 - what third parties or other public bodies have been, or will need to be, consulted,
 - the reasons for the consultation and
 - the date on which the public body expects to complete its consultations with third parties or other public bodies
- the proposed new response date.

6. If the Commissioner gives permission for an extension, the public body must promptly, in writing:

- tell the applicant the reason for the extension,
- tell the applicant when a response can be expected,
- provide the applicant with a copy of the Commissioner's permission letter, and
- provide a staged release of records, where practicable.

II. PART 4 - COMPLAINTS INVESTIGATIONS

Under section 42(1) of the Act, the Commissioner is generally responsible for monitoring how the Act is administered. He is authorized in section 42(1)(a) to conduct investigations and audits to ensure compliance with any provision of the Act.

In section 42(2) the Commissioner may investigate and attempt to resolve complaints that

- (a) a duty imposed by the Act or the regulations has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 10,
- (c) a fee required under the Act is inappropriate,
- (d) a correction of personal information requested under section 29(1) has been refused without justification, and
- (e) personal information has been collected, used or disclosed by a public body in contravention of Part 3.

Section 42(2) does not limit the general powers outlined in section 42(1).

Concerns about whether a public body has conducted an adequate search are treated as complaints about a failure to perform a duty under section 6(1) and thus as complaints under section 42(2)(a) of the Act.

A. Complaints Procedure

1. Complaints must be in writing. However, a complaint may be made orally where a complainant has a limited ability to read and write, or a physical disability which impairs the ability to make a written complaint. There are no statutory time limits for bringing a complaint.
2. Where a person makes an oral complaint, the Commissioner's staff will put it in writing. After the complainant has reviewed it, he or she must acknowledge and sign the document.
3. Where a complainant has not given the public body an opportunity to respond to and attempt to resolve the complaint, the OIPC will normally refer the complainant to the public body before the OIPC takes further action. If the complainant believes the public body has not adequately dealt with the complaint, the OIPC will consider whether further action by the Office is warranted. Where the OIPC determines it would not be appropriate to refer the complainant to the public body, the file will be referred to an Officer for investigation.
4. In conducting a complaint investigation, the Officer exercises powers to investigate, make findings and dispose of the complaint, delegated by the Commissioner under section 49 of the Act.
5. Prior to the disposition of the complaint, the Officer will ensure that parties have an opportunity to be heard.

6. If the public body or complainant disagrees with the Officer's disposition of the complaint, the Commissioner may review the Officer's findings and determine whether further investigation is warranted.

B. Section 43 Authorizations

Section 43 of the Act provides:

If the head of a public body asks, the Commissioner may authorize the public body to disregard requests under section 5 that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body.

Procedure

1. The public body must make its request in writing to the Commissioner, stating the reasons for the request.
2. The Commissioner's office will send a copy of the public body's request to the person(s) affected.
3. A Portfolio Officer will attempt to mediate a settlement of the matter where the parties involved agree.
4. Where the matter is not settled, the public body must file a written submission to the Commissioner.
5. The Commissioner's office will send a copy of the public body's submission to the person(s) affected, who will be given an opportunity to make a submission in reply. The Commissioner's office will also send a copy of the reply to the public body. The public body may be given a final right of reply.
6. The party may make part of its submission *in camera* where it may reveal sensitive information which may be subject to an exception under the Act. If the Commissioner questions whether any information should be received *in camera*, the party will be given an opportunity to make further representations on the issue before the Commissioner decides if the affected party is entitled to have access to that part of the submission.
7. The Commissioner will attempt to resolve a request under section 43 within 30 days after the request is received, unless the parties involved agree that more time is required.

III. PART 5 - REVIEWS AND INQUIRIES

A. How to ask for a review - Section 53

1. A request for review must be in writing. However, a request may be made orally where an applicant has a limited ability to read and write, or a physical disability which impairs the ability to make a written request.
2. Where a person makes an oral request, the Commissioner's staff will write the request for the applicant. After the applicant has reviewed it, he or she must acknowledge and sign the document.
3. A request for review must provide enough information for the Commissioner to outline the issues involved. Specifically, an applicant should provide:
 - (a) the applicant's name, address and telephone number (and facsimile number if available),
 - (b) a copy of the request made to the public body,
 - (c) a brief explanation of what the applicant wants reviewed, and
 - (d) a copy of the public body's decision.
4. The applicant must deliver a request for review to the Commissioner's office within 30 days after being notified of the public body's decision. The Commissioner may allow a longer period of time where the public body consents, or where circumstances prevented the applicant from delivering the request within the 30-day period.

B. Notice of review - Section 54

1. The Commissioner must give a copy of the request for review to the head of the public body concerned and any other person that he considers appropriate.
2. Where the request for review involves a decision to refuse access, and the head of the public body has not given notice to third parties under section 23(1.1) of the Act, the review may involve only the initial decision to refuse access, or where practicable, and where the matter cannot be fully considered without including the third parties, the Commissioner's office may give a copy of the request for review to third parties under section 54(b).

C. Mediation

1. A request for review will be referred to a Portfolio Officer for investigation and mediation. In assisting the parties to settle the dispute, a Portfolio Officer exercises powers delegated by the Commissioner under section 55 of the Act.
2. The mediation process is separate from a subsequent inquiry process. All information provided by the parties to the Portfolio Officer during mediation is treated in confidence. Information will not be disclosed to any other party unless the party providing the information consents. (see also section D.17)
3. Where a request for review is not settled, it may be referred to the Commissioner for an inquiry under section 56 of the Act.
4. The mediation process may continue after a Notice of Inquiry has been issued.

D. Inquiries

Time requirement

1. An inquiry must be completed within 90 days after receiving the request for review. The 90 days will be calculated from the time the Commissioner has received a request for review that contains the information outlined in section III.A.3 above.
2. Where a public body substantially changes its decision during mediation, the request for review may be considered closed. If the applicant is not satisfied with the public body's second decision after reviewing the records released, he or she may request another review within 30 days after being notified of the second decision. The 90-day time period will begin to run from the time the Commissioner receives a new request from the applicant.

Parties and intervenors

3. The parties in an inquiry are the applicant, the public body and any third party whose information may be contained in the records under review.
4. The Commissioner may give intervenor status by sending a Notice of Inquiry to any person or organization he considers appropriate. The Commissioner's office may request comments from the parties before giving notice to an intervenor. Intervenors are expected to bring a broader perspective than the parties to the issues in dispute.

Type of inquiry

5. Most inquiries involve only legal argument as to the application of sections of the Act to the records in dispute. Few cases involve evidentiary matters. Accordingly,

inquiries will be written only, unless the Commissioner decides that representations should be made orally. In deciding whether to hold an oral inquiry, the Commissioner may consider the following criteria:

- (a) material facts are in dispute,
- (b) credibility is an issue,
- (c) the issues are complex,
- (d) the review raises significant policy issues, or
- (e) the person who requested the review has a limited ability to read and write, or a physical disability which impairs the ability to make a written submission.

6. Where the Commissioner is of the view that both written and oral representations are necessary to assist him to decide a matter, he may require each party to file a written submission before an oral inquiry.

Portfolio Officer's report

7. Before an inquiry, the Portfolio Officer who was assigned to the review will prepare a brief report to the Commissioner and the parties. The purpose of the report is to provide a chronology of the request, review and inquiry processes, outline the facts of the case, set out any facts which are in dispute, describe the records in dispute and outline the provisions of the Act which are in issue. The report will not include details about the mediation process and attempts to settle the matter.

8. The Commissioner will make all findings of fact in an inquiry. Where the Portfolio Officer's report contains an agreed statement of facts, the Commissioner may accept those facts as evidence.

Notice of Inquiry

9. At the time a request for review is accepted and acknowledged by the Commissioner's office, all parties are notified that an inquiry must be completed within 90 days and a Notice of Inquiry will be issued on day 68 if the matter is not settled.

10. The Portfolio Officer's report will be distributed with the Notice of Inquiry. A party will have the opportunity to object in writing to any of the contents of the report.

11. A Notice of Inquiry will be issued to all parties and intervenors on day 68, if no settlement has been reached. A Notice may be issued sooner than day 68, if the investigation reveals little chance of settlement and attempts to resolve the matter have failed.

12. Where it appears that a resolution of a matter is imminent at day 68, a Notice of Inquiry may be deferred, with the Commissioner's approval, or where all parties consent to hold an inquiry outside the 90-day period. All consents must be in writing and must be received by the Commissioner on or before day 90.

13. An inquiry may be adjourned after a Notice of Inquiry has been issued, with the Commissioner's approval, or where all parties agree and, if applicable, consent to hold an inquiry outside the 90-day period. All consents must be in writing and must be received by the Commissioner before an adjournment is granted.

In camera submissions

14. The Commissioner may receive an *in camera* submission (in whole or in part) from a party where it may disclose the contents of the record in dispute or where it contains information which may be subject to an exception under the Act. A party making an *in camera* submission must give reasons to the Commissioner as to why it should be received *in camera*.

15. If the Commissioner questions whether a submission should be received *in camera*, the party affected will be given an opportunity to make further representations on the issue before the Commissioner decides if another party is entitled to have access to the submission.

16. Where a party makes part of its written submission *in camera*, it should provide the Commissioner with one full submission containing the *in camera* sections, with those sections identified, and a second submission with the *in camera* portions severed, suitable for distribution to the other parties.

Mediation Records

17. A party must not include in a submission a record generated by the Commissioner's office during the mediation process, or a record provided by any party related to the mediation process unless that party has obtained the written consent of the other parties to do so. If written consent is not obtained, the Office will remove that mediation record from the submission and return it to the party submitting it. It will not form part of the record of proceedings before the Commissioner in the inquiry.

Exchange of written submissions and right of reply

18. All written inquiries will be conducted within a 22 day schedule, as follows:

Day 68 - Notice of Inquiry is issued to all parties and intervenors.

Day 82 - Initial submissions are filed by all parties and intervenors.

Day 89 - Reply submissions are filed by all parties wishing to do so.

Day 90 - Close of inquiry. No further submissions may be filed by any party, except for objections on procedural issues.

All submissions must be received by the Commissioner's office by 12:00 noon on the date required.

19. The Commissioner will accept written submissions in paper format only. The Office will not accept submissions in the form of electronic mail (e-mail).

20. Each party will receive a copy of another party's written submission, unless all or part of it was received by the Commissioner *in camera*. Intervenors will not receive copies of the parties' written submissions.

21. Each party must make an initial submission. Each party will have a right of reply to the initial submissions made by the other parties. Intervenors will not have a right of reply.

22. A reply submission should not include new facts or raise new issues.

23. Where a party does not make an initial submission, that party will not be permitted to submit a reply to a submission filed by the other party(ies) except under extenuating circumstances. The party must explain the extenuating circumstances in writing and the Commissioner will decide whether or not to accept the late submission.

24. Submissions filed with the Commissioner under Part 5 of the Act will not be available from the Commissioner's office to the public on request. Submissions are considered to be records under section 3(1)(c). They may contain third party or sensitive personal information. However, copies may be requested directly from the parties. Access for research purposes may be arranged under controlled conditions.

Oral inquiries

25. The time allowed for an oral inquiry will be based upon realistic time estimates from each party and the complexity of the issues in dispute.

26. All parties and intervenors have a right to be present during submissions made to the Commissioner by other parties, unless a submission or part of it must be made *in camera*.

27. An oral inquiry will normally be open to the public, unless

(a) the submissions are made *in camera*, or

- (b) the subject matter of the review involves sensitive personal information relating to the applicant or a third party, that person requests the Commissioner to conduct the inquiry in private, either in whole or in part, and the Commissioner is of the view that public disclosure would be an unreasonable invasion of personal privacy.

28. All oral inquiries will be recorded. On request by a party, the Commissioner's office will provide a copy of the tape, or will arrange for transcripts to be made. The party requesting it must pay the cost of the tape or the transcription.

29. Where all or part of an oral inquiry has been held in private, the Commissioner may request submissions from the parties as to whether the transcript may be subsequently released to the parties. The Commissioner may release all or part of a transcript where he determines that a private inquiry had not been justified, having considered the submissions of the parties and all of the circumstances.

30. Parties may appear on their own behalf, or they may be represented by counsel or an agent.

31. Evidence may be taken under oath or affirmation.

32. Intervenors may file written submissions in advance or they may make oral submissions at the inquiry. Where written submissions are received from intervenors, copies will be distributed to the parties.

33. Each party will have an opportunity to make initial submissions. Each party will also have a right of reply. Intervenors may make initial submissions only. The order of presentation will normally be as follows:

- a) Applicant
- b) Public Body
- c) Third party(ies)
- d) Intervenor (initial submissions only)

Return of records

34. Any records which were produced during the review by the public body concerned will be returned not later than 60 days following the date of the Commissioner's Order.