

APPEALING ACCESS TO INFORMATION DECISIONS IN

Alberta

RESOURCES

Freedom of Information and Protection of Privacy Act (FOIP)

<http://www3.gov.ab.ca/foip/legislation/index.cfm>

FOIP Guide

http://www3.gov.ab.ca/foip/other_resources/publications_videos/foip_guide.cfm

FOIP Guidelines and Practices 2005

http://www3.gov.ab.ca/foip/guidelines_practices/2005/index.cfm

Office of the Information and Privacy Commissioner of Alberta

<http://www.oipc.ab.ca/>

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a public body's response, you have the right to request that the Office of the Information and Privacy Commissioner review that decision.

WHAT ELSE CAN I HAVE REVIEWED?

In addition to requesting a review of the public body's decision, you can request a review:

- if you do not receive a response to your original request for access within 30 days, or if you find a time extension to be unreasonable;
- if your request to waive fees has been refused; or
- about any relevant act, or failure to act, by the public body in question.

Furthermore, as a third party, you may request a review if, contrary to your stated wishes, a public body decides to disclose to an applicant information about you that is harmful to your business interests or harmful to your personal privacy.

HOW DO I REQUEST A REVIEW?

You must submit a request for review to the Office of the Information and Privacy Commissioner within 60 days of your being notified of the access decision. However, the Commissioner has the discretion to accept a request for review after the 60 day period. Your request must be made in writing, either by filling out a Request for Review Form, available at <http://www.oipc.ab.ca/foip/detailspage.cfm?id=985>, or by submitting a letter to the Commissioner's office.

HOW MUCH WILL IT COST TO REQUEST A REVIEW?

There is no fee for requesting a review in Alberta.

WHO WILL BE INVOLVED IN THE REVIEW PROCESS?

You, as the one who made the original access request and requested the review, are entitled to be involved. You are the applicant. The public body that refused your access request will also be involved. Finally, a third party whose interests are affected by an access request may be involved.

WHAT ARE THE STEPS IN THE REVIEW PROCESS?

1. Mediation

The Information and Privacy Commissioner of Alberta may authorize a Portfolio Officer to

mediate and try to settle any matter that is the subject of a request for review. It is important to approach mediation with an open mind, a willingness to listen to the views of the other parties, and a commitment to be flexible.

2. Inquiry

If the matter is not settled through mediation, an inquiry may be requested. The Commissioner has the discretion to refuse to conduct an inquiry if, in the opinion of the Commissioner, the subject matter of the request review has been dealt with in a previous order or investigation; or the circumstances warrant refusing to conduct an inquiry. An inquiry may be oral or in writing and may or may not be public at the discretion of the Commissioner.

The Commissioner's office asks each party to provide a written submission, also called a "brief", at the beginning of an inquiry. The written submission contains each party's evidence and arguments. "Evidence" is the material submitted to establish the facts relevant to the Commissioner's decision, whereas "arguments" are the interpretation of the law based on the facts.

For the public body to be successful, it must generally establish that its refusal to grant access is based on a legitimate exception to the right to access public information. It has the burden of proof. However, if you have requested a third party's personal information, you must prove that you are entitled to access. You can prove this by showing that disclosure would not be an unreasonable invasion of the third party's privacy.

When preparing your representations:

- be as specific as possible and limit yourself to relevant facts and arguments;
- research past orders that are similar to your situation and consider the tests outlined in the orders. Cite relevant past orders in your representations; and
- consider other case law or relevant legislation. Your local library may be able to help you find this material.

The mediation process is separate and distinct from the inquiry process. Information provided by the parties during mediation is not forwarded to the Commissioner for the inquiry.

3. Order

Once a review has been completed, the Commissioner's office must notify the parties in writing of the Commissioner's decision, known as an order.

If the order directs the public body to disclose the information you requested, it has 50 days to comply. However, the public body is not permitted to comply until the period for bringing a judicial review application has expired (45 days).

WHAT ARE THE POWERS OF THE COMMISSIONER DURING AN INQUIRY?

The Commissioner is authorized to conduct examinations, to summon witnesses, to compel the production of documents and to hold a person in contempt.

HOW LONG WILL THE REVIEW TAKE?

An inquiry must be completed within 90 days of the Commissioner's office receiving the request for review. The Commissioner may extend the time period of the review.

CAN I APPEAL TO A COURT IF I STILL CANNOT GET ACCESS?

Any party that is unhappy with a decision of the Privacy Commissioner of Alberta may ask to have the decision reviewed by the Court of Queen's Bench of Alberta. However, the courts have generally shown deference to the Commissioner's decisions.