

## APPEALING ACCESS TO INFORMATION DECISIONS IN

# British Columbia

---

### RESOURCES

***Freedom of Information and Protection of Privacy Act (FOIPPA)***

[http://www.oipc.bc.ca/legislation/FOI-ACT%20\(2004\).pdf](http://www.oipc.bc.ca/legislation/FOI-ACT%20(2004).pdf)

***British Columbia Information Policy and Privacy Branch***

<http://www.mser.gov.bc.ca/privacyaccess/>

***Guide to Access to Information and Protection of Privacy***

<http://www.oipc.bc.ca/pdfs/public/GuideToFOIPPAJune2004.pdf>

***B.C. Freedom of Information and Privacy Association***

<http://fipa.bc.ca/home/>

---

***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](mailto: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 business 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 information about you.

## **HOW DO I REQUEST A REVIEW?**

Generally, you must submit a request for review to the Information and Privacy Commissioner's Office within 30 business days of your being notified of the denial of access. If you miss this deadline, however, the Information and Privacy Commissioner has discretion to nonetheless accept your request for review, but will generally not do so unless you have a good reason for missing the deadline.

Your request must be made in writing, either by filling out a Request for Review Form, available at <http://www.oipc.bc.ca/pdfs/public/FOIPPARquestforReviewComplaintForm.pdf>, or by submitting a letter to the Information and Privacy Commissioner's office. Your request should include the following:

- your name, address, and telephone number;
- the public body's name;
- the file number of your original access request;
- a copy of your initial request to the public body;
- a copy of the public body's response to your request; and
- a specific explanation as to why the Information and Privacy Commissioner should review the public body's decision.

## **HOW MUCH WILL IT COST TO REQUEST A REVIEW?**

There is no fee for requesting a review in British Columbia.

## WHO WILL BE INVOLVED IN THE REVIEW PROCESS?

You, as the one who made the original access request, 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 will usually 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. Unlike in mediation, in an inquiry the Office of the Information and Privacy Commissioner (OIPC) can order a public body to disclose the requested information. Such an order is open to review by the courts. An inquiry may be oral, but is usually in writing, and may or may not be public at the discretion of the OIPC.

The OIPC asks each party to provide a written submission 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 OIPC'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 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.

In preparing your representations:

- assume that the OIPC knows nothing about your situation even though you have already had a mediation;
- 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. For past orders, see:  
[http://www.oipc.bc.ca/sector\\_public/orders\\_decisions/sectional\\_index.htm](http://www.oipc.bc.ca/sector_public/orders_decisions/sectional_index.htm); and
- consider other case law or relevant legislation. Your local library may be able to help you find this material.

Any party may, but is not required to, be represented by counsel or an agent.

### **3. Order**

Once a review has been completed, the OIPC must notify the parties in writing of its decision, known as an order.

If the order directs the public body to disclose the information you requested, it is legally bound to do so within 30 business days (unless an application for judicial review is filed with the BC Supreme Court within that time). Other possible outcomes include requiring the public body to:

- withhold or release parts the requested records in whole or in part;
- to reconsider its decision to withhold records;
- to correct personal information in records; or
- to change its policies or processes in the future.

### **WHAT ARE THE POWERS OF THE COMMISSIONER DURING AN INQUIRY?**

The OIPC is authorized to conduct examinations, to summon witnesses and to compel the production of documents.

### **HOW LONG WILL THE REVIEW TAKE?**

The OIPC must complete an investigation and submit a report within 90 business days of its receiving the request for review, subject to an extension.

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

Any party that is unhappy with a decision of the OIPC may ask to have the decision reviewed by the British Columbia Supreme Court. However, the courts have generally shown deference to the OIPC's decisions.