

APPEALING FEDERAL ACCESS TO INFORMATION DECISIONS

RESOURCES

Access to Information Act

<http://laws.justice.gc.ca/en/A-1>

Privacy Act

<http://laws.justice.gc.ca/en/P-21/index.html>

Treasury Board of Canada information page

http://www.tbs-sct.gc.ca/gos-sog/atip-aiprp/index_e.asp

Justice Canada information page

<http://www.justice.gc.ca/en/ps/atip/index.html>

Access to Information and Privacy Act Bulletins

http://infosource.gc.ca/bulletin/bulletin_e.asp

Office of the Federal Privacy Commissioner

http://www.privcom.gc.ca/index_e.asp

Office of the Federal Information Commissioner

<http://www.infocom.gc.ca/menu-e.asp>

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 government institution's response to your access request, you have the right to complain. Complaints with regard to requests for government information made under the *Access to Information Act* should be directed to the Office of the Information Commissioner (OIC). Complaints with regard to requests for your personal information made under the *Privacy Act* should be directed to the Office of the Privacy Commissioner (OPC).

WHAT ELSE CAN I MAKE A COMPLAINT ABOUT?

In addition to complaining about the government institution's refusal of access, you can complain to the OPC or OIC:

- 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 for access in a particular official language or in a particular alternate format has been refused; or
- about any relevant act, or failure to act, by the government institution in question.

You may also complain to the OIC if your request to waive fees has been refused.

Furthermore, as a third party, you may complain to the OPC if, contrary to your stated wishes, a government institution decides to disclose personal information about you.

HOW DO I SUBMIT A COMPLAINT?

Generally, the Commissioner (either the Information Commissioner or the Privacy Commissioner, depending on the type of information you have requested) must receive your complaint within one year of the date when your original request for access was received by the government institution.

To submit a complaint, write a letter to the Commissioner describing the circumstances of your case. Include all relevant information, such as:

- your name, home address and telephone number;
- the name of the government organization;
- the nature of the complaint. Does it relate to access; correction/notation; language; fees; privacy (collection, retention and disposal, use and disclosure); or time limits (failure to meet limit, the granting of an extension, etc.);
- copies of any relevant documents, such as the government institution's response to you and a copy of your original request if available; and
- to the extent known, a description of when and where the incident complained about occurred as well as the names of those involved, and what action, if any, has been taken to respond to the matter.

In addition, if you are complaining about a “no records exist” decision, indicate in your letter why you believe records *do* exist.

HOW MUCH WILL IT COST TO SUBMIT A COMPLAINT?

There is no fee for submitting a complaint.

WHO WILL BE INVOLVED IN THE COMPLAINT?

You, as the one who made the original access request and filed the complaint, are entitled to be involved. You are the complainant. The government institution that refused your access request will also be involved. Finally, a third party whose interests are affected by the access request may be involved.

WHAT ARE THE STEPS IN THE COMPLAINT PROCESS?

1. Intake

After the Office of the Privacy Commissioner or the Office of the Information Commissioner receives your complaint, an investigator will be assigned to the file. The investigator will send a letter of acknowledgement to the complainant and a letter of notification to the government institution.

2. Investigation

The investigator will obtain records and documentation from the institution and reviewing the documents for exceptions that would justify denying access. It may also include conducting on-site visits to review documents and procedures or to interview witnesses, institution program officials, and Access to Information and Privacy (ATIP) staff.

You, as the complainant, will also have the opportunity to make representations to the investigator. Representations are your opportunity to present your position. They are arguments or evidence that you present to persuade the Commissioner to make a recommendation in your favour. In preparing your representations, you should focus on telling your story clearly. The investigator will be able to assist by asking questions and clarifying important issues.

Dispute resolution is always contemplated and where possible and appropriate the investigator may attempt to “settle” the complaint with the complainant or negotiate corrective measures with the institution. Additional representations may or may not be invited from the parties at this stage.

At the conclusion of an investigation, the investigator discusses the results of the investigation with the parties to ensure that all issues have been addressed. She or he will then prepare an investigation report for the Commissioner’s review. This report will contain

recommendations as to the disposition of the complaint (well-founded, not well-founded, well-founded/resolved, resolved, or settled during the course of the investigation).

Finally, note that all investigations are conducted in private. Nobody is entitled to have access to your representations.

3. Report of the Commissioner

Although the investigator makes recommendations as to the disposition of the complaint, the final report and conclusions are those of the Information or Privacy Commissioner. The Commissioner makes a final decision and issues a letter of finding(s) to all parties.

The Commissioner's conclusions and recommendations are not binding on the government institution.

If the Commissioner recommends disclosure but the government institution still refuses to provide access, you (as the complainant) will be informed that you have the right to apply to Federal Court for a review of the matter.

WHAT ARE THE POWERS OF THE COMMISSIONER DURING AN INVESTIGATION?

The Commissioner is authorized to: conduct examinations; compel the production of documents; examine documents; summon witnesses; administer oaths; and inspect premises.

HOW LONG WILL IT TAKE FOR MY COMPLAINT TO BE INVESTIGATED?

The length of the investigation process depends on a number of factors, including the nature and amount of requested information, the types of exemptions claimed by the government institution, the particular process selected for your complaint, and your willingness (and that of the government organization) to work towards settling the complaint. The investigation of a simple complaint may take only a few weeks, while more complex ones can take several months. There is no set time limit for dealing with complaints.

WHAT IF I STILL CANNOT GET ACCESS?

If you have been refused access to information and have already complained to the Commissioner, you may apply to the Federal Court of Canada for a review of the matter. This must be done within 45 days of receiving the Commissioner's report.

The Commissioner may appear on your behalf (with your consent) or as a party to the case.

The Court can order a government institution to disclose (or not to disclose) a record. The Court may also award the costs of the proceedings to one of the parties.

If the Commissioner found in favour of the government institution, you may still ask the Federal Court to review the Commissioner's recommendation. However, the courts have generally come to the same conclusion as the Commissioner.