

APPEALING ACCESS TO INFORMATION DECISIONS IN

Newfoundland & Labrador

RESOURCES

Access to Information and Protection of Privacy Act

<http://www.hoa.gov.nl.ca/hoa/statutes/a01-1.htm>

Link to Office of the Information and Privacy Commissioner of Newfoundland & Labrador

<http://www.oipc.gov.nl.ca/>

Link to guide

<http://www.justice.gov.nl.ca/just/civil/atipp/>

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 to your access request, you have two avenues of appeal. First, you have the right to complain to the Office of the Information and Privacy Commissioner (OIPC). Alternatively, you may apply to a judge of the Supreme Court Trial Division. The OIPC can only make recommendations, whereas a court can make binding decisions. Nevertheless, the OIPC process is generally faster and less costly than going to court.

Note that if you choose to approach the court, you cannot also request a review from the OIPC, although another party may do so.

WHAT ELSE CAN I APPEAL?

In addition to asking for a review of a public body's decision to refuse access, you can complain to the OIPC:

- 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 you believe that the fee required by the public body is inappropriate; or
- if the public body did not adequately assist you in making your request.

Furthermore, as a third party, you may complain if, contrary to your stated wishes, a public body decides to disclose information about you.

HOW DO I APPEAL?

You must file your Request for Review with the OIPC within a set period of time. Generally, the OIPC must receive your complaint within 60 days of your being notified of the access decision, although this may be extended with the permission of the OIPC. If you never received a response to your request, however, the 60-day deadline does not apply.

You may request a review by either writing a letter to the OIPC or by completing a Request for Review form available at <http://www.oipc.gov.nl.ca/pdf/requestform.pdf>. You must include all documentation related to your request, including copies of your original access request and the public body's response. The OIPC will not accept requests for review by e-mail.

HOW MUCH WILL IT COST?

There is no fee for submitting a Request for Review in Newfoundland and Labrador.

WHO WILL BE INVOLVED IN THE APPEAL?

You, as the one who made the original access request and filed the complaint, 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 APPEAL PROCESS?

1. Informal Resolution

Generally, the first step taken by the OIPC is to try to resolve the complaint informally. The OIPC can take any steps it considers appropriate in doing so.

Should the OIPC be unable to resolve the complaint informally within 30 days of receiving the request, it must issue a formal report.

2. Formal Review

In conducting its formal review, the OIPC will invite all parties (the applicant, public body, and any affected third parties) to submit representations.

Representations are your opportunity to present your position to the OIPC. They are arguments or evidence that you present to persuade the OIPC to resolve the appeal in your favour. In preparing your representations:

- assume that the OIPC knows nothing about your situation even if you have already had an informal review;
- be as specific as possible and limit yourself to relevant facts and arguments;
- consider other case law or relevant legislation. Your local library may be able to help you find this material;
- note that each party's representations may be shared with the other parties to the appeal, unless there is an overriding confidentiality concern.

This is your opportunity to let the OIPC know your position, and why you disagree with the public body's original decision to deny you access.

The onus is on the public body to show that you should be denied access. However, on a review of a decision to give an applicant access to a record containing information that relates to a third party, the burden shifts to the third party to prove that the applicant has no right of access to the record.

Following the formal review, the OIPC will issue a report of its findings, which will be provided to all parties. If it recommends that the public body reverse its original decision, the head of the public body has 15 days to decide whether to follow the OIPC's recommendation. Either way, it must give written notice to the OIPC and the parties of its decision.

WHAT ARE THE POWERS OF THE OIPC DURING THE APPEAL?

The OIPC is authorized to conduct examinations, to compel the production of documents and to enter the premises of a public body to examine and copy records.

HOW LONG WILL THE APPEAL TAKE?

The OIPC must issue its report within 90 days of receiving your request for review.

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

If you are not satisfied with the public body's response to the OIPC's report, you can appeal to the Supreme Court of Newfoundland and Labrador. In certain cases, the OIPC can appeal a public body's response on your behalf. It can also act as an intervener in the courts.

Any appeal must be made within 30 days of receiving the public body's response to the recommendations contained in the OIPC's report.