

APPEALING ACCESS TO INFORMATION DECISIONS

Nova Scotia

RESOURCES

Freedom of Information and Protection of Privacy Act (FOIPOP) and Regulations

www.gov.ns.ca/legislature/legc/statutes/freedom.htm

www.gov.ns.ca/just/regulations/regs/foiregs.htm

Part XX of the Municipal Government Act

<http://www.gov.ns.ca/legislature/legc/index.htm>

Freedom of Information and Protection of Privacy Review Office

www.foipop.ns.ca/

Government guide

www.gov.ns.ca/just/foi/foiquest.htm

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 or municipality's response to your access request, you have two options for appeal. First, you can request a review by the Nova Scotia FOIPOP review officer. Alternately, you may file an appeal at the Supreme Court of Nova Scotia. This second option is only available if there is no third party involved or if all third parties consent to the appeal to the Supreme Court.

WHAT ELSE CAN I APPEAL?

In addition to appealing the public body or municipality's decision, you may request a review by the review officer:

- 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
- with regard to any relevant act, or failure to act, by the public body or municipality in question.

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

HOW DO I REQUEST A REVIEW?

Generally, the review officer must receive your complaint:

- within 60 days of your receiving the public body or municipality's decision if you are appealing a denial of access; or
- within 20 days from receiving notice of a decision if you are a third party objecting to a request for review

If you never received a response to your request, you are deemed to have had your request denied after 30 days, and the deadline for requesting a review is 60 days from that date.

Your application for review must be made in writing. You are not required to use a form, but one is available and it may help you structure your request for a review. It can be found at: <http://www.foipop.ns.ca/content/Forms/Form%207.pdf>.

If you are appealing to the courts, you must serve a copy of the prescribed form of application or review on the responsible officer of the public body or municipality.

WHAT WILL IT COST?

In Nova Scotia there is a \$25 fee for requesting a review of a public body or municipality's decision. There is no fee for requesting a review of a decision not to grant access to, or allow

correction of, your own personal information.

WHO WILL BE INVOLVED IN THE REVIEW?

You, as the one who made the original access request and filed the request for review, are entitled to be involved. You are the applicant. The public body or municipality 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?

There are up to three steps in the appeal process: intake, mediation, and adjudication.

1. Intake

Your application for appeal will first be reviewed by a review analyst, who may contact you for more information, to explain the appeal process, or to redirect you to other government organizations, as appropriate.

If your request for review is accepted, a review file is opened, and the applicant, the public body or municipality and any affected third parties are notified.

It is important to note that the Freedom of Information and Protection of Privacy Review Office (FIPPRO) will not disclose any information that it receives in the course of its review. While it may share the public body's arguments with you or with third parties, it will not disclose the content of records that the public body or municipality does not wish to release.

2. Mediation

Mediation is a process used to help you and the public body or municipality reach a settlement. It can help resolve some or all of the issues, reduce the number of records in dispute, and clarify the issues.

Mediation is initially conducted by telephone. There is sometimes also a face-to-face meeting with the mediator.

You can help by approaching mediation with an open mind, a willingness to listen to the views of the other parties, and a commitment to be flexible in order to reach a compromise.

The mediator is also available to educate and advise. For example, she or he can refer you to relevant orders of the review officer, or give you an opinion on the merits of your case. In discussing relevant questions with the mediator, such as what it is you want and why, you may come to the conclusion that there are other ways to get the information you seek.

If a request for review is settled at the mediation stage, the mediator will close the file. If mediation is not completely successful, however, the file will be referred to the review officer

for a formal review. A letter will be sent to each of the parties setting out what has been resolved and what the outstanding issues are.

3. Formal Inquiry/Review

Should mediation be unsuccessful, the review officer will conduct a formal inquiry in which you will be given the opportunity to make representations, which you must submit within 10 days of receiving the mediator's letter. Representations are your opportunity to present your position to the review officer. They are arguments or evidence that you present to persuade him or her to resolve the review in your favour. In preparing your representations:

- indicate why you disagree with the public body or municipality's decision not to grant access;
- provide any arguments, facts or other evidence that supports your position;
- assume that the review officer knows nothing about your situation even if 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. Past orders can be found at: www.canlii.org/ns/cas/nsfoipop/;
- 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 review unless there is an overriding confidentiality concern.

Generally the public body or municipality has the onus of establishing its right to refuse your access request. The burden of proof is shifted onto you, the applicant, if you have requested personal information about a third party.

Once the review is completed, the review officer will issue a written report detailing his or her decision, and this report will be sent to all parties. If there is a recommendation in favour of disclosure, the public body or municipality has 30 days to indicate whether or not it accepts the recommendation. If the public body or municipality does not give a written response within 30 days, it is deemed to have rejected the review officer's recommendations.

WHAT ARE THE POWERS OF THE REVIEW OFFICER DURING AN INVESTIGATION?

The review officer is authorized to examine records and to inspect premises. If a public body or municipality has not complied with a request of the review officer to produce records within the prescribed time period, you may apply to the Supreme Court for an order requiring the public body or municipality to produce the records.

HOW LONG WILL THE REVIEW TAKE?

The mediation stage should be completed within 30 days, but it can be extended if there is progress and the parties consent. Generally, it takes two to three months to complete a review.

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

Any applicant or third party who has received a copy of the review officer's report and is dissatisfied with a decision of a public body or municipality may appeal the decision to the Supreme Court of Nova Scotia. This request must be made within 30 days of receiving the public body or municipality's response to the recommendations contained in the review officer's report. If the public body or municipality does not give a written response within 30 days, the public body or municipality is deemed to have rejected the review officer's recommendations and the 30-day appeal period begins following the date of the deemed refusal. You must also provide a notice of appeal to the public body or municipality, which in turn must notify third parties. Finally, the Minister of Justice must also be notified in writing of any appeal.

The review officer cannot be a party to an appeal.

The Supreme Court can require a public body or municipality to disclose information, but only if the information you have requested does not fall under one of the exemptions in the *FOIPOP Act*, as described in *Accessing Government Information in Nova Scotia* and *Accessing Personal Information in Nova Scotia*.