

APPEALING ACCESS TO INFORMATION DECISIONS IN

Nunavut

RESOURCES

Nunavut Access to Information and Protection of Privacy Act

http://nunavutcourtofjustice.ca/library/consol-stat/CSNu_1999_002_Access_Info_Privacy.pdf

Nunavut Access and Privacy Guide

<http://www.gov.nu.ca/Nunavut/atip/ai.html>

Nunavut Access and Privacy Directories

<http://www.gov.nu.ca/Nunavut/atip/ep.html>

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 can ask the Office of the Information and Privacy Commissioner (OIPC) to conduct a review of the request and the response. Your request for review may be denied on certain narrow grounds, such as if it is not made in good faith. Otherwise, the OIPC must conduct a review.

If you disagree with the results of the review by OIPC, you can appeal to the Nunavut Supreme Court.

WHAT CAN I APPEAL?

The OIPC can review an access request when:

- a public body has denied you access to some or all of the records you requested;
- the public body was unable to locate a record that you believe is in its custody or control;
- the public body takes more than 30 days to respond to your request;
- your request to have fees waived has been denied;
- your request to correct personal information has been denied; or
- you want to prevent a public body from disclosing information that affects your interests.

HOW DO I REQUEST A REVIEW?

Generally, the OIPC must receive your request for review within 30 days of your being notified of the access decision.

The request must be made in writing, either by sending a letter to the OIPC or by filling out a form, available at: <http://www.gov.nu.ca/Nunavut/atip/review.pdf>, and mailing it to:

Information and Privacy Commissioner
5018-47th Street
Yellowknife, NT
X1A2N2
Phone: (867) 669-0976
Toll Free: 1-888-521-7088
Fax: (867) 920-2511
email: atippcomm@theedge.ca

You are not required to use the form, but doing so may help you to structure your request.

Your request for review must include the following:

- the name of the public body to which you sent your original request and the file number assigned to your request by that public body;

- an overview of the original request;
- which decision you would like the OIPC to review; and
- your name, address and telephone number.

Copies of your original access request and the public body's decision letter should also be included, if possible.

HOW MUCH WILL IT COST TO REQUEST A REVIEW?

There is no fee for requesting a review.

WHO WILL BE INVOLVED IN THE REVIEW?

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, any third party whose interests are affected by the access request may be involved.

WHAT ARE THE STEPS IN THE REVIEW PROCESS?

The OIPC will investigate your case. As part of this process, all parties will be asked to make representations. Representations are your opportunity to present your position to the OIPC. They are arguments or evidence that you put forward to persuade the OIPC to resolve the review in your favour. In preparing your representations:

- assume that the OIPC knows nothing about your situation;
- 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;
- 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.

Generally, the public body must prove that you have no right of access. In cases where the request relates to personal information about a third party, the applicant must prove that disclosure is not contrary to the Act.

Once the OIPC has completed the review, it will issue a written report that sets out and explains its recommendations. A copy of the report will be provided to all parties.

If the OIPC's report recommends disclosure (or otherwise finds against the public body), the public body has 30 days to submit its response to all parties, indicating whether it intends to follow the OIPC's recommendation. If the public body does not respond within 30 days, that will be considered a rejection of the OIPC's recommendations.

WHAT ARE THE POWERS OF THE OIPC DURING A REVIEW?

The OIPC is authorized to compel testimony, to examine witnesses under oath, and to compel the production of documents.

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

The Act requires the OIPC to complete its review within 180 days of receiving your request for review.

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

If the OIPC agreed with the public body's decision not to grant access, you may appeal to the Supreme Court by filing a notice of appeal within 30 days of receiving the OIPC's report. A third party who disagrees with the OIPC's decision to allow access to its records may also appeal.

The Commissioner cannot be a party to the appeal.

The Court has the power to order the public body to disclose or not to disclose the information in question and its decision is final.