

## APPEALING ACCESS TO INFORMATION DECISIONS IN

# Ontario

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### RESOURCES

**Ontario Freedom of Information and Protection of Privacy Act**

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90f31\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90f31_e.htm)

**Municipal Freedom of Information and Protection of Privacy Act**

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m56\\_e.htm#BK1](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m56_e.htm#BK1)

**Information and Privacy Commissioner/Ontario**

<http://www.ipc.on.ca>

**Mini Guide to Freedom of Information and Protection of Privacy Act**

[http://www.ipc.on.ca/scripts/index\\_.asp?action=31&P\\_ID=11601&N\\_ID=1&PT\\_ID=23&U\\_ID=6534179785](http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11601&N_ID=1&PT_ID=23&U_ID=6534179785)

**Mini Guide to Municipal Freedom of Information and Protection of Privacy Act**

[http://www.ipc.on.ca/scripts/index\\_.asp?action=31&P\\_ID=11599&N\\_ID=1&PT\\_ID=11205&U\\_ID=0](http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11599&N_ID=1&PT_ID=11205&U_ID=0)

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**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 government institution's response to your access request, you have the right to appeal its decision to the Office of the Information and Privacy Commissioner (IPC).

## **WHAT ELSE CAN I APPEAL?**

In addition to complaining about the government institution's decision, you can appeal to the IPC:

- 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
- in relation to any relevant act, or failure to act, by the government institution in question.

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

## **HOW DO I SUBMIT AN APPEAL?**

Generally, the IPC must receive your appeal within 30 days of your being notified of the access decision.

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

- your name, address and telephone number;
- the name of the government organization and the file number it has assigned to your request;
- copies of any relevant documents, such as the government institution's response to you and a copy of your original request if available;
- your contact information, including your phone number; and
- the remedy you are seeking.

In addition, if you are appealing a "no records exist" decision, indicate in your letter why you believe records *do* exist.

## **HOW MUCH WILL IT COST TO APPEAL?**

For appeals related to requests for one's own personal information or to corrections of personal information, the fee is \$10. For all other appeals the fee is \$25. Payment in the correct amount must accompany your appeal request and may be made by cheque or money order payable to "The Minister of Finance".

There is no fee for appealing a government institution's decision to release information about you to a third party. In addition, there is no fee for any subsequent appeal stemming from the original decision of an institution.

## **WHO WILL BE INVOLVED IN THE APPEAL PROCESS?**

You, as the one who made the original access request and requested the review, are entitled to be involved. You are the appellant. The government institution that refused your access request will also be involved. Finally, a third party whose interests are affected by an access request may be involved. For example, a business whose commercial information is being requested, or an individual whose personal information is being requested may be parties to the appeal.

## **WHAT ARE THE STEPS IN THE APPEAL PROCESS?**

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

### **1. Intake**

Your appeal will first be reviewed by an intake analyst, who may contact you for more information, to explain the appeal process, or to redirect you to other government organizations, where appropriate.

If your appeal is accepted, the IPC will send you a written confirmation outlining the process it has decided is most appropriate for your case. The IPC will also notify the government institution, as well as any other affected person, of your appeal.

In most cases, if your appeal is accepted it will then be streamed to either mediation or to adjudication. In some cases involving certain straightforward procedural issues the appeal will be fully resolved at the intake stage.

### **2. Mediation**

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

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 IPC, or give an opinion on the file through an opinion letter. 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 want.

If an appeal is settled at the mediation stage, the mediator will close the appeal. If mediation

is not completely successful, however, you will receive a Mediator's Report which summarizes the mediation and identifies issues that have not yet been resolved. If there is an error or omission in the Mediator's Report, you can ask for an amendment of the report. You must then decide whether to proceed with your appeal.

If you do choose to continue with the appeal, in most cases it will proceed to the adjudication stage, but in some cases involving straightforward procedural issues, the appeal will be fully resolved at the mediation stage.

### **3. Adjudication**

The adjudicator will send a Notice of Inquiry to the parties. This document sets out the background of the appeal, describes the records at issue, and describes the issues the adjudicator feels need to be resolved. The Notice of Inquiry also invites parties to submit written representations by a specified date.

Representations are arguments or evidence that you present to the adjudicator to persuade him or her to resolve the appeal in your favour. In preparing your representations:

- assume that the IPC 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. For past orders, see:  
[http://www.ipc.on.ca/scripts/index\\_.asp?action=31&N\\_ID=1&P\\_ID=25&U\\_ID=0](http://www.ipc.on.ca/scripts/index_.asp?action=31&N_ID=1&P_ID=25&U_ID=0)
- consider other case law or relevant legislation. Your local library may be able to help you find this material;
- recall that representations must be received by the date stipulated in the Notice of Inquiry; and
- note that each party's representations may be shared with the other parties to the appeal, unless there is an overriding confidentiality concern.

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

The OPC is authorized to conduct examinations, to compel the production of documents and to inspect premises.

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

The length of the appeal 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 appeal, and your willingness (and that of the government organization) to work towards settling the appeal. Simple appeals can be resolved within a few weeks, while more complex ones can take several months. If your file is resolved through mediation, your appeal will not normally take longer than a couple of

months, while the majority of files requiring adjudication are completed within four months.

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

Any party that is unhappy with a decision of the IPC may ask to have the decision reviewed by the Ontario Divisional Court. However, the courts have generally shown deference to the IPC's decisions.