

## APPEALING ACCESS TO INFORMATION DECISIONS IN

# Prince Edward Island

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### RESOURCES

**Freedom of Information and Protection of Privacy Act (FOIPP)**

[http://www.gov.pe.ca/law/statutes/pdf/f-15\\_01.pdf](http://www.gov.pe.ca/law/statutes/pdf/f-15_01.pdf)

**Prince Edward Island Freedom of Information and Protection of Privacy Office**

<http://www.gov.pe.ca/foipp/index.php3>

**Guide to FOIPP**

<http://www.gov.pe.ca/foipp/index.php3>

**FOIPP FAQ**

<http://www.assembly.pe.ca/foipp/index.php?info=5#faq>

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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)*

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## **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 the right to appeal its decision to the Information and Privacy Commissioner (IPC).

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

In addition to requesting a review of the public body's decision, you can request a review:

- 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
- about any relevant act, or failure to act, by the public body in question.

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

## **HOW DO I REQUEST A REVIEW?**

Generally, you must submit a request for review to the IPC within 60 days of your being notified of the denial of access. If you miss this deadline, however, the IPC has discretion to grant your request for review.

Your request must be made in writing, either by filling out a Request for Review Form, available at <http://www.gov.pe.ca/forms/pdf/793.pdf>, or by submitting a letter to the IPC. Your request should include the following:

- a description of the circumstances of the case;
- a copy of the public body's response;
- your original access request; and
- your contact information, including your telephone number.

## **HOW MUCH WILL IT COST TO REQUEST A REVIEW?**

There is no fee for requesting a review in Prince Edward Island.

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

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, 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 two steps in the appeal process: mediation and adjudication.

### 1. Mediation

Mediation is a process used to help you and the public body 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's office, 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 discover that there are other ways to get the information you want.

### 2. Inquiry

If the matter is not settled through mediation, an inquiry may be requested. Unlike in mediation, in an inquiry the IPC can order a public body to disclose the requested information, although such an order is open to review by the courts. An inquiry may be oral or in writing and may or may not be public at the discretion of the Commissioner.

The IPC asks each party to provide a written submission at the beginning of an inquiry. In preparing your submission:

- assume that the IPC knows nothing about your situation even though 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 if possible; and
- consider other case law or relevant legislation. Your local library may be able to help you find this material.

For the public body to be successful, it must generally establish that its refusal to grant access is based on a legitimate exception to the right to access public information. It has the burden of proof. However, if you have requested a third party's personal information, you must prove that you are entitled to access. You can prove this by showing that disclosure would not be an unreasonable invasion of the third party's privacy.

Any party may, but is not required to, be represented by counsel or an agent.

Once a review has been completed, the IPC must notify the parties in writing of his or her decision. If the decision, or "order", requires the disclosure of information, the public body holding the information is obliged to release it. However, the public body must wait until the end of the 30 day period for bringing an application for a judicial review before releasing the

information. Following that period, the public body has 40 days to comply with the order.

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

The Commissioner is authorized to compel the production of documents and to meet privately with public body employees.

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

Generally, the IPC must complete an investigation and submit a report within 90 days of the Commissioner's office receiving the request for review. However, an extension will be allowed when all parties are notified of the extension and provided with the date when the inquiry will be completed.

### **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 Supreme Court of Prince Edward Island. However, the court will only reconsider the IPC's decision if:

- the IPC exceeded its jurisdiction (e.g. decided on an issue that was outside its mandate);
- the IPC wrongly declined jurisdiction (e.g. refused to decide on something that was within its mandate);
- the IPC abused a discretionary power; or
- the IPC made an error of law.