

APPEALING ACCESS TO INFORMATION DECISIONS IN

Quebec

RESOURCES

Quebec Access to Information Legislation

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/A_2_1/A2_1_A.html

Access Commission

<http://www.cai.gouv.qc.ca/index-en.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 have the right to request a review of its decision by the Commission d'accès à l'information (Commission).

WHAT ELSE CAN I APPEAL?

In addition to complaining about the public body's decision, you can complain to the Commission:

- if you do not receive a response to your original request for access within 20 days; or
- if your request for a particular mode of access has been denied.

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

HOW DO I APPEAL?

Generally, the Commission must receive your appeal request, known as a request for review, within 30 days from the date the public body denied or should have responded to your access request.

Your application for a request for review must be submitted in writing and be addressed to the Secretariat de la Commission. It must include:

- your full name and address;
- the name of the relevant public body;
- brief reasons for your request for review; and
- a copy of your original access request and any response you received from the public body.

HOW MUCH WILL IT COST?

There is no fee for requesting a review.

WHO WILL BE INVOLVED?

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 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?

There are up to two steps: mediation and adjudication.

1. 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 Commission. 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 review. If mediation is not completely successful, however, you must decide whether to proceed to the adjudication stage.

2. Adjudication

In this approach, unlike mediation, the Commission can require the public body to disclose the information you have requested.

The Commission will invite all parties to make representations. Representations are your opportunity to present your position to the adjudicator. They are arguments or evidence that you present to the adjudicator to persuade him or her to resolve the review in your favour. In preparing your representations:

- assume that the adjudicator 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.cai.gouv.qc.ca/index-en.html>;
- consider other case law or relevant legislation. Your local library may be able to help you find this material; 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 COMMISSION DURING AN INVESTIGATION?

The Commission is authorized to admit evidence, call witnesses and conduct examinations.

It may also cancel its investigation if it determines that the applicant's request is frivolous or made in bad faith, or that the Commission's intervention in the matter would clearly serve no purpose.

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 public body, the particular process selected for your appeal, and your willingness (and that of the public body) to work towards settling the appeal. Simple appeals can be resolved within a few weeks, while more complex ones can take several months.

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

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

