

APPEALING ACCESS TO INFORMATION DECISIONS IN

Yukon

RESOURCES

Access to Information and Protection of Privacy Act (ATIPP)

<http://www.ombudsman.yk.ca/infoprivacy/atippact.pdf>

Office of the Yukon Ombudsman and Information and Privacy Commissioner

<http://www.ombudsman.yk.ca>

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 refusal to grant access, you have the right to request that the Commissioner review that decision.

WHAT ELSE CAN I HAVE REVIEWED?

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

- if the public body removes information from a record;
- 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;
- if a public body refuses or fails to correct your personal information or to annotate the record;
- if you believe that a public body has collected, used or disclosed personal information contrary to the *ATIPP* Act; or
- if a public body decides to disclose personal information about you.

HOW DO I REQUEST A REVIEW?

You must submit a request for review to the Commissioner within 30 days of your being notified that your request for access has been denied. However, the Commissioner has the discretion to accept a request for review after the 30 day period. Your request must be made in writing, either by filling out a Request for Review Form, available at: http://www.ombudsman.yk.ca/infoprivacy/info_index.html, or by submitting a written request to the Commissioner's office.

HOW MUCH WILL IT COST TO REQUEST A REVIEW?

There is no fee for requesting a review in Yukon.

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 be involved. A third party whose interests are affected by an access request may also be involved. Finally, the Commissioner may include the Records Manager as an interested party.

WHAT ARE THE STEPS IN THE REVIEW PROCESS?

1. Mediation

The Commissioner may authorize his or her assistant to mediate in order to try to settle any matter that is the subject of a request for review. It is important to approach mediation with an open mind, a willingness to listen to the views of the other parties, and a commitment to be flexible.

2. Inquiry

If the matter is not settled through mediation, the review proceeds to inquiry. An inquiry may be oral or in writing and may or may not be public at the discretion of the Commissioner.

The Commissioner may conduct a pre-inquiry meeting to clarify the issues to be dealt with at inquiry.

The Commissioner's office asks each party to provide a written submission. The written submission contains each party's evidence and arguments. "Evidence" is the material submitted to establish the facts relevant to the Commissioner's decision, whereas "arguments" are the interpretation of the law based on the facts.

It is up to the public body to prove an applicant has no right of access to a record (or the part of it in question) or that the extension of time is justified. If a third party requests a review, the burden of proof shifts to that third party.

When preparing your written submission:

- be as specific as possible and limit yourself to relevant facts and arguments;
- you may want to research orders from other jurisdictions that are similar to your situation, consider the tests outlined and cite them in your submission; and
- you may also want to consider other case law or relevant legislation. Your local library may be able to help you find this material.

The mediation process is separate and distinct from the inquiry process. Information provided by the parties during mediation is not forwarded to the Commissioner for the inquiry.

3. Commissioner's Report

Once a review has been completed, the Commissioner must notify the parties in writing of his or her decision.

If the Commissioner recommends the public body disclose the information you requested, the public body has 30 days to decide whether or not to comply.

WHAT ARE THE POWERS OF THE COMMISSIONER DURING AN INQUIRY?

The Commissioner is authorized to conduct examinations, to summon witnesses, to compel the production of documents and to hold a person in contempt.

HOW LONG WILL THE REVIEW TAKE?

An inquiry must be completed within 90 days of the Commissioner's office receiving the request for review unless the Commissioner extends the time period of the review.

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

You may appeal to the Yukon Supreme Court if the public body decides to not follow the Commissioner's recommendation to grant access or if the Commissioner finds that a public body is authorized or required to refuse access.