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## Guide to OIPC processes (FIPPA)



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

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INFORMATION & PRIVACY  
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# FIPPA GUIDE TO OIPC PROCESSES

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## INTRODUCTION

This Guide addresses the most common procedures that the Office of the Information and Privacy Commissioner (“OIPC”) uses under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). For all complaints and requests for review, the OIPC’s overriding policy is to encourage the parties to resolve the issues by settlement. OIPC staff are authorized to attempt mediation of all matters before they are referred to a more formal process.

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## GENERAL

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Unless they are defined below, words in this document have the meanings given to them in FIPPA. The following definitions apply in this document:

**“access request”** means a request for records made to a public body under FIPPA;

**“Adjudicator”** means the Commissioner and any delegate of the Commissioner directed by the Commissioner to conduct an inquiry under Part 5 of FIPPA or to decide an application made under ss. 42, 43 or 56;

**“applicant”** means a person who has made an access request or, in the case of an application under ss. 42, 43, or 56 of FIPPA, the party making the application;

**“appropriate person”** means a person to whom the OIPC gives notice under s. 54(b) of FIPPA and includes a third party or (in the case of a request for review by a third party) an applicant;

**“Commissioner”** means the Information and Privacy Commissioner appointed under FIPPA and includes an Acting Information and Privacy Commissioner appointed and acting under FIPPA;

**“complainant”** means an individual who has made a complaint under Part 4 of FIPPA;

**“complaint”** means a complaint under FIPPA so designated by the OIPC;

**“day”** does not include a Saturday or a holiday as defined in the *Interpretation Act*;<sup>1</sup>

**“exception”** means an exception to the right of access to records set out in Part 2 of FIPPA.

**“FIPPA”** means the *Freedom of Information and Protection of Privacy Act*;

**“hearing”** means a hearing held under FIPPA;

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<sup>1</sup> On the date of this document, “holiday” includes Sunday, Christmas Day, Good Friday, Easter Monday, Canada Day, Victoria Day, British Columbia Day, British Columbia Family Day, Labour Day, Remembrance Day, New Year’s Day and December 26. The *Interpretation Act* provisions in force on the relevant date will apply.

**“in camera”** means privately;

**“inquiry”** means an inquiry held under Part 5 of FIPPA;

**“Intake Officer”** means an individual employed or retained by the OIPC as an Intake Officer;

**“intervenor”** means a person or organization with a broader interest in an issue being decided in an inquiry and whom the Commissioner has invited to participate in the inquiry;

**“Investigator”** means an individual employed or retained by the OIPC as an Investigator;

**“Notice of Hearing”** means a notice issued by the OIPC that a hearing will be held under FIPPA;

**“Notice of Inquiry”** means a notice issued by the OIPC that an inquiry will be held under Part 5 of FIPPA;

**“OIPC”** means the Office of the Information and Privacy Commissioner for British Columbia and, in relation to the exercise of powers, duties and functions of the Commissioner, includes the exercise of those powers by a delegate of the Commissioner;

**“public body”** means a public body as defined in FIPPA;

**“respondent”** means the party responding to an application made by another party under ss. 42, 43 or 56 of FIPPA;

**“request”** means a request for review under Part 5 of FIPPA;

**“third party”** has the meaning given in FIPPA.

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## EXTENDING TIME LIMIT FOR RESPONDING

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Section 7 of FIPPA provides that, subject to ss. 23 and 24(1) (notice to a third party), a public body must respond to a request for records not later than 30 days after receiving a request unless:

- the time limit is extended under s. 10;
- the public body transfers the request to another public body under s. 11;
- the public body applies under s. 43 of FIPPA to the OIPC for authorization to disregard the request;
- the public body issues a fee estimate and none of the events set out in s. 7(4) has occurred;
- the applicant requests a review relating to a fee; or
- a third party requests a review.

Section 10(1) of FIPPA provides that the head of a public body may extend the time for responding to a request for up to 30 days or, with the “Commissioner’s” permission, for a longer period if one or more of the following apply:

- 10(1)(a): the applicant does not give enough detail to enable the public body to identify a requested record;
- 10(1)(b): a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body; or
- 10(1)(c): more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to the requested records.
- 10(1)(d): the applicant has consented, in the prescribed manner, to the extension.

In addition, with the permission of the OIPC, the head of a public body may extend the time for responding to a request as follows:

- if one or more of the circumstances described in ss. 10(1)(a) to (d) of FIPPA apply, for a period of longer than the 30 days permitted under that subsection;

- if the OIPC otherwise considers that it is fair and reasonable to do so, as per s. 10(2)(b) of FIPPA.

Intake Officers and Investigators have delegated authority to grant permission under s. 10 of FIPPA.

A public body may, on its own, extend the original 30-day time period for responding to a request for up to 30 additional days, if the reasons for taking the extension meet the criteria in s. 10(1) of FIPPA.

If a public body exercises its own discretion under s. 10(1) of FIPPA to take a time extension of up to 30 additional days and then determines, within that extended time, that it will need more than 60 days to respond to a request, it may request permission from the OIPC for a further extension.

A public body may request permission from the OIPC to extend the time for responding to a request if it determines, within the original 30-day time period for responding to the request, that one or more of the circumstances in ss. 10(1)(a) to (d) apply and it will need more than 60 days to respond to a request or that it would be fair and reasonable to extend the response time.

The OIPC will not consider a request for an extension of time after the original or, if applicable, extended time period has expired.

To request permission from the OIPC for an extension of time, a public body must complete an application for time extension.<sup>2</sup>

If the OIPC gives permission for an extension, the public body must promptly deliver to the applicant a written notice containing the following:

- (a) the reason for the extension;
- (b) when a response can be expected;
- (c) a copy of the OIPC's permission letter; and
- (d) provision for a staged release of records where practicable.

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<sup>2</sup> Time extension applications are available on the OIPC's website at <http://www.oipc.bc.ca/tools-guidance/forms.aspx#Public-Bodies>

## COMPLAINT INVESTIGATION

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Under Part 4 of FIPPA, the Commissioner is generally responsible for monitoring how FIPPA is administered and the Commissioner is also authorized to conduct investigations and audits to ensure compliance with any provision of FIPPA.

Part 4 provides that the OIPC may investigate and attempt to resolve complaints that:

- a duty imposed by FIPPA or the regulations has not been performed;
- an extension of time for responding to an access request is not in accordance with s. 10 of FIPPA;
- a fee required under FIPPA is inappropriate or that a public body has improperly denied a request for a fee waiver;
- a correction of personal information requested under FIPPA has been refused without justification; or
- personal information has been collected, used or disclosed by a public body in contravention of Part 3 of FIPPA.

The OIPC will generally treat a concern about whether a public body has conducted an adequate search for records as a complaint that a public body has failed to perform its duty under s. 6(1) of FIPPA and may investigate it as a complaint under Part 4 of FIPPA.

A complaint must be made to the OIPC in writing. The OIPC will accept complaints by email sent to the OIPC email address posted on the OIPC's website ([www.oipc.bc.ca](http://www.oipc.bc.ca)). A complaint may be made orally where a complainant has a limited ability to read and write or a physical disability that impairs the complainant's ability to make a written complaint. Where a person makes an oral complaint, the OIPC will put it in writing. After the complainant has reviewed it, he or she must acknowledge the document.

A complaint must provide enough information for the OIPC to understand and describe the issues involved and should be made within a reasonable time after the complainant became aware of the alleged incident giving rise to the complaint. A complainant must provide all of the following:

- (a) the complainant's name, address and telephone number (and any facsimile number and email address);
- (b) an explanation of the circumstances giving rise to the complaint; and



- (c) where the OIPC has referred the complainant to the public body under para. 3.4, a copy of the applicant's complaint to the public body and a copy of the public body's response to the complaint, if any.

The OIPC will not consider a complaint complete until all of the information described above, as applicable, has been provided to the OIPC and the OIPC will not act on the complaint until it is complete. The OIPC may request that a complainant explain any undue delay in submitting the complaint to the OIPC.

Where a complainant has not given the public body an opportunity to respond to and attempt to resolve the complaint, the OIPC will normally refer the complainant to the public body before the OIPC takes further action. If the complainant believes the public body has not adequately dealt with the complaint, the OIPC will consider whether further action by the OIPC is warranted. Where the OIPC determines it would not be appropriate to refer the complainant to the public body, the OIPC will provide the public body with notice of the complaint and refer the file to an Investigator for investigation.

In conducting a complaint investigation, the Investigator exercises powers delegated by the Commissioner to investigate, make findings and dispose of the complaint.

Before disposition of the complaint, the Investigator will ensure that all parties have an opportunity to be heard.

If the public body or complainant disagrees with the Investigator's disposition of the complaint, either party may request that the OIPC reconsider its decision. While there is no statutory obligation under FIPPA to reconsider the outcome of a complaint investigation, it is OIPC policy to review requests for reconsideration and to re-open an investigation when there are reasonable grounds to do so. An investigation may be re-opened under the following circumstances:

- When it is necessary to correct a clerical error, an accidental error or an omission by the intake officer;
- When the finding has resulted from a breach of natural justice or administrative fairness;
- When relevant issues were not addressed or fully resolved; and
- Where new evidence or facts are brought forward that were not previously available to the individual seeking the reconsideration.

If the investigation is re-opened for reconsideration, the possible outcomes are:

- (a) Confirm all or part of the findings of the Investigator;
- (b) Direct further investigation by an Investigator on all or part of the issues raised;
- (c) Determine that no further action should be taken with respect to all or part of the complaint if further action would not serve the interest of a just determination of the issues raised in the complaint;
- (d) Refer the matter to a hearing.

## AUTHORIZATIONS TO DISREGARD ACCESS REQUESTS

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Section 43 of FIPPA provides that, if the head of a public body asks, the Commissioner may authorize the public body to disregard access requests, or requests for correction of personal information, that

- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or
- (b) are frivolous or vexatious.

A public body seeking authorization to disregard an access request or request for correction must make a request in writing to the OIPC stating the reasons for the request.

The OIPC will notify the parties of the request.

An Investigator will attempt to mediate a settlement of the matter.

Where the matter is not settled during mediation, each party and those affected will be allowed to make written submissions in accordance with a schedule set by the OIPC at that time.

A party may make part of its submission in private (also known as *in camera*) where it may reveal information which may be subject to an exception under FIPPA.

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## REQUESTS FOR REVIEW

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### A. REQUESTING A REVIEW

A request for review must be made to the OIPC in writing. The OIPC will accept requests for review by email sent to the OIPC email address posted on the OIPC's website, [www.oipc.bc.ca](http://www.oipc.bc.ca). A request may be made orally where an applicant has a limited ability to read and write or a physical disability which impairs the applicant's ability to make a written request. Where a person makes an oral request, the OIPC will put it in writing. After the applicant has reviewed it, he or she must acknowledge the document.

A request for review must provide enough information for the OIPC to understand and describe the issues involved. An applicant must provide all of the following:

- (a) the applicant's name, address and telephone number (and any facsimile number and email address);
- (b) a copy of the access request;
- (c) a brief explanation of what the applicant wants reviewed; and
- (d) a copy of the public body's decision.

The OIPC will not consider a request for review complete until all of the information described above has been provided to the OIPC and the OIPC will not act on the request until it is complete.

The applicant must deliver a request for review to the OIPC within 30 days after being notified of the public body's decision. The OIPC may allow a longer period of time where the public body consents or where circumstances prevented the applicant from delivering the request within the 30-day period.

Where an applicant has not given the public body an opportunity to respond to and attempt to resolve a request for review, the OIPC may, under s. 44(3.1) of FIPPA, require the applicant to attempt to resolve the request for review in the way directed by the OIPC before the OIPC begins or continues an inquiry under s. 56 of FIPPA.

### B. NOTICE OF REVIEW

The OIPC will give a copy of the request for review to the head of the public body concerned and any other person that the OIPC considers appropriate.

Where the request for review involves a decision to refuse access and the matter cannot be fully considered without including any third parties, the OIPC may give a copy of the request for review to third parties under s. 54(b) of FIPPA.

### **C. APPLICATION OF NEW EXCEPTIONS**

If, during the mediation process (see section D below), the public body decides to apply a new exception to disclosure of the records other than those specified in its response to the applicant, it must make that decision and communicate it in writing to the applicant and the OIPC as soon as practicable. The OIPC will treat any such decision by the public body as a supplement to the original response to the access request, not as a new response.

If a public body or other party seeks to raise a new exception after the OIPC issues a notice of inquiry to the parties, the OIPC will deal with it as a preliminary issue. The public body or other party will then be invited to make written submissions to the OIPC on why it should be entitled or permitted to argue the applicability of the new exception.

### **D. MEDIATION**

The OIPC may, under s. 55 of FIPPA, refer each request for review to an Investigator for mediation. The intent of the mediation process is to facilitate a settlement of the issues and to ensure that the applicant has received access to all records or information to which the applicant is entitled under FIPPA.

The mediation process is separate from any subsequent inquiry.

The OIPC may extend the period for mediation if it is fair and reasonable or otherwise necessary or appropriate in the circumstances.

Where a request for review is not settled during mediation, it may be referred for an inquiry.

### **E. DECISION NOT TO HOLD AN INQUIRY UNDER S. 56 OF FIPPA**

If a request for review does not settle, the OIPC has discretion to decide whether all or part of the matter will proceed to an inquiry under s. 56 of FIPPA.

Considerations for the exercise of that discretion include whether:

- (a) the review has no reasonable prospect of succeeding, including because it is plain and obvious that requested records are subject to an exception to disclosure in FIPPA or fall outside the scope of FIPPA;

- (b) the review is frivolous, vexatious or otherwise an abuse of process;
- (c) the review is trivial or no meaningful remedy is required or available under FIPPA;
- (d) the substance of the review is more appropriately dealt with in another proceeding or process.

A party may also apply in writing to the OIPC to ask that all or part of a request for review not proceed to an inquiry.

Before the OIPC decides that all or part of a request for review will not proceed to an inquiry, the parties will be given an opportunity to be heard, in accordance with a schedule set by the OIPC at that time.

## INQUIRIES

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### A. GENERAL

An inquiry is a process wherein the Commissioner or her delegate (“Adjudicator”) considers the issues in dispute, makes a decision and issues an order.

Inquiries are generally conducted in writing.

The OIPC’s *Instructions for Written Inquiries* are available on our website under “Tools & Guidance”

### B. INVESTIGATOR’S FACT REPORT

Before an inquiry, the responsible Investigator will prepare a fact report providing:

- (a) a chronology of the request, review and inquiry processes;
- (b) setting out the facts and indicating any that are in dispute;
- (c) describing the records and issues in dispute and any issues no longer in dispute; and
- (d) specifying which provisions of FIPPA are in issue.

The fact report will not include details relating to any attempts the parties made to settle the matter through mediation, other than to note any issues that have been settled and are no longer in dispute.

Before the Notice of Inquiry is issued, the Investigator will distribute the Fact Report to the applicant (includes a third party applicant) and the public body. If these parties have any objections to the contents of the fact report, they must raise them with the Investigator within the time frame specified.

### **C. NOTICE OF INQUIRY**

If the matter proceeds to inquiry, the OIPC will issue a Notice of Inquiry, along with the finalized fact report, to the parties.

The OIPC may adjourn an inquiry or extend the timelines for submissions after it has issued a Notice of Inquiry if it is fair and reasonable or otherwise necessary or appropriate in the circumstances.

### **D. PARTIES AND INTERVENORS**

The parties in an inquiry are the applicant, the public body and any third party or other appropriate person given notice under s. 54(b) of FIPPA.

The OIPC may invite a person to participate in the inquiry as an intervenor. The OIPC may request comments from the parties before giving notice to an intervenor. An intervenor is not a party.

Parties and intervenors may appear on their own behalf or may be represented at the inquiry by an agent or a lawyer at their own expense.

### **E. SUBMISSIONS MADE *IN CAMERA***

The OIPC may receive a submission *in camera*, in whole or in part, where the submission may disclose the contents of the record in dispute or where it contains the kind of information that could be subject to an exception under FIPPA. A party making a submission *in camera* must give written reasons to the OIPC as to why the submission should be received *in camera*.

If a party intends to submit material *in camera*, it must obtain the OIPC's approval ahead of time, in accordance with the time limit set out in the Notice of Inquiry, by providing the OIPC with a copy of its submission which clearly identifies all material proposed for submission *in camera*.

## F. MEDIATION MATERIAL NOT PERMITTED IN SUBMISSIONS

A party must not include any mediation material in a submission, unless that party has obtained the written consent of the other parties to do so. If written consent is not obtained, the OIPC will remove any mediation material from the submission.

Mediation material includes

- records, information or communications the OIPC generated during the mediation process, including the Investigator's views and opinions on the merits of the case and any recommendations the Investigator made to the parties on ways of settling the issues in dispute;
- records or information provided by any party related to the mediation process;
- information or records relating to attempts to settle the issues before the inquiry began.

Mediation material does not include information related to the factual outcomes of mediation, such as

- changes in the issues or the exceptions applied;
- changes to the scope of the records in dispute;
- changes to or waivers of fees assessed by the public body.

## G. EXCHANGE OF SUBMISSIONS AND REPLY

Written inquiries are normally conducted as follows:

- (a) Notice of Inquiry and Fact Report are issued to all participants.
- (b) Initial submissions are filed and exchanged by all participants.
- (c) Reply submissions are filed and exchanged by all participants.
- (d) Close of Inquiry. Participants may not file any further submissions or any objections on procedural or other issues after this day without the OIPC's permission. The participant must explain in writing the reason for requesting permission to make a further submission or objection and the Adjudicator will decide whether or not to accept it.

**Note:** The schedule for submissions will be reflected in the Notice of Inquiry

All submissions must be exchanged among the participants and concurrently sent to the attention of the Registrar of Inquiries and received by the OIPC on the dates specified.

The OIPC will accept written submissions prepared in accordance with the standards set out in the inquiry instructions.

Each participant may reply to the initial submissions made by the others. If a participant does not make an initial submission, that participant cannot make a reply submission except in extenuating circumstances.

A reply submission must not include new facts or raise new issues.

## H. PROCEDURAL OBJECTIONS

If a party raises a procedural objection, the OIPC may suspend the inquiry pending a decision on the objection.

## DEEMED REFUSAL REVIEWS

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FIPPA sets out the time within which a public body must respond to a request for access to records. The usual time for response is 30 days after receiving a request described in s. 5(1), but extensions of the response time are possible under s. 10 in appropriate circumstances.

Section 53(3) of FIPPA says that the failure of the head of a public body to respond in time is to be treated as a decision to refuse access to the record, known as a deemed refusal. This policy sets out the process the OIPC follows for deemed refusals.

### Stage 1: Intake Officer Evaluates the Review

1. Upon receipt of the request for review, an Intake Officer reviews the documents supplied to ensure that:
  - (a) the applicant has provided a copy of the original request for records;
  - (b) the applicant has provided a copy of the public body's letter acknowledging the access request, if any;



- (c) the issue properly qualifies as a deemed refusal that should be considered under the OIPC's deemed refusal process.
  - (d) if more information is required contact is made with the applicant to confirm that the review relates solely to a deemed refusal.
2. Based on the information from the applicant, the Intake Officer will complete a preliminary calculation of the response time taking into account time extensions and time excluded due to fee-related issues.
3. If satisfied that the sole issue relates to the public body's failure to respond in time, the OIPC review file will be opened and, within four days after file opening, the Intake Officer will contact the public body to:
  - (a) confirm that the public body received the request and opened a file;
  - (b) confirm time lines and due dates;
  - (c) confirm whether or not time extensions were taken;
  - (d) confirm that there are no outstanding fee issues;
  - (e) record the public body's explanation for the delay;
  - (f) identify other appropriate persons *e.g.*, if the delay is due to consultations;
  - (g) obtain the public body's estimated time for release;
  - (h) determine if the public body is willing to consider a consent order;
  - (i) tell the public body that the OIPC will not refer a request for review about a deemed refusal for mediation under s. 55.
4. The Intake Officer will contact the applicant to determine if the applicant is willing to consider a consent order if the public body has indicated a proposed date for release.
5. If both parties have indicated a willingness to seek a consent order, the matter proceeds to Stage 2.

## **Stage 2: Consent Orders**

1. If both parties have indicated a willingness to seek a consent order, the Intake Officer will assign the file to an Investigator.
2. The Investigator drafts a consent order. If no agreement is reached the matter will be moved to Stage 3.
3. The public body and the applicant must sign the consent order. Once signed by the parties, the consent order is forwarded to the Commissioner for review and approval if appropriate.

## **Stage 3: Expedited Inquiry Process**

1. If either party is unwilling to seek a consent order, the OIPC will prepare and send out a Notice of Inquiry and fact report. Each party and those affected will be allowed to make written submissions in accordance with a schedule set out in the notice and the accompanying instructions. The key information required from the public body is the date on which it can respond to the request.
2. The Adjudicator will issue a decision.

Word cloud background with terms: privacy, public, private, legislation, transparency, education, investigations, procedures, reports, databases, records, use, organizations, BC, FIPPA, oversight, government, regulate, trust, disclosure, surveillance, individual accountability, PIPA, proactive, collection, streams, BC, reports, bodies, digital, information, mediation, data, trust, records, use, review, public, organizations, education, investigations, procedures, BC, legislation, Commissioner, citizens, oversight, reports, FIPPA, government, regulate, trust, disclosure, surveillance, individual accountability, PIPA, proactive, collection, streams, BC, reports, bodies, digital, information, mediation, data, trust, records, use, review, public, organizations, education, investigations, procedures, BC, legislation, Commissioner, citizens, oversight, reports, FIPPA, government, regulate, trust, disclosure, surveillance, individual accountability, PIPA, proactive, collection, streams, BC, reports, bodies, digital, information, mediation, data, trust, records, use, review, public, organizations, education, investigations, procedures, BC, legislation, Commissioner, citizens.



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