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## Guide to OIPC Processes (PIPA)



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
*for British Columbia*

Protecting privacy. Promoting transparency.



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# PIPA 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 *Personal Information Protection Act* (“PIPA”). 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 PIPA. The following definitions apply in this document:

**“access request”** is an individual’s request to an organization for access to the individual’s personal information under the control of the organization;

**“Adjudicator”** means the Commissioner and any delegate of the Commissioner directed by the Commissioner to conduct an inquiry under Part 11 of PIPA or to decide an application made under ss. 36, 37 or 50;

**“applicant”** means an individual who makes a request under s. 27 of PIPA;

**“Commissioner”** means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act* and includes an Acting Information and Privacy Commissioner;

**“complainant”** means an individual who has made a complaint under Part 10 of PIPA;

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

**“contact information”** means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

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

**“employee personal information”** means information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

**“in camera”** means privately;

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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.

**“inquiry”** means an inquiry held under Part 11 of PIPA;

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

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

**“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;

**“organization”** includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include

- (a) an individual acting in a personal or domestic capacity or acting as an employee,
- (b) a public body,
- (c) the Provincial Court, the Supreme Court or the Court of Appeal,
- (d) the Nisga’a Government, as defined in the Nisga’a Final Agreement, or
- (e) a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor.

**“personal information”** means information about an identifiable individual and includes employee personal information, but does not include contact information or work product information;

**“PIPA”** is the *Personal Information Protection Act*,

**“work product information”** means information prepared or collected by an individual or group of individuals as a part of the individual’s or group’s responsibilities or activities related to the individual’s or group’s employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

## EXTENDING TIME LIMIT FOR RESPONDING

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Section 29 of PIPA provides that an organization must respond to an applicant not later than 30 days after receiving a request unless:

- the time limit is extended under s. 31;
- the organization applies under s. 37 of PIPA to the OIPC for authorization to disregard the request;
- the applicant requests a review relating to a fee;

Section 31(1) of PIPA provides that an organization may extend the time to respond to a request for personal information from 30 days to up to 60 days, without getting permission from the OIPC, if:

- (a) the individual requesting access does not give enough detail to enable the organization to identify the personal information requested;
- (b) a large amount of personal information is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the organization; or
- (c) more time is needed to consult with another organization or with a public body before the organization is able to decide whether or not to give the access to the requested document.

An organization may not take more than 60 days to respond to a request for personal information without getting permission from the OIPC. An application for OIPC permission to extend the response time must be made in writing and must include the following information:

- the reasons for asking for a time extension,
- any organization file number for the request;
- a brief description of the personal information requested,
- the date the organization received the request,
- the date the organization sent a fee estimate and the date fees or a fee deposit was paid, if applicable,
- the date the organization took its own time extension and the reasons,
- the date the current response time expires,

- any relevant correspondence to the individual concerned respecting previous time extensions,
- if the time extension is being requested because a large amount of personal information was requested or must be searched:
  - the amount of personal information involved including the approximate number of pages,
  - an explanation of how meeting the current response time would unreasonably interfere with the organization's operations,
- if the time extension is being requested because more time is needed to consult with another organization or public body:
  - what other organizations or public bodies have been, or will need to be, consulted about the request for personal information,
  - the reasons for the consultation,
  - the date on which the organization expects to complete its consultations with other organizations or public bodies,
  - the proposed new response date or the number of additional days requested.

An application for OIPC permission to extend the response time should be made at the earliest opportunity, and before the expiry of the current response time.

When the OIPC permits an extension of the response time, the organization should still expedite its response to the individual concerned by releasing information in stages whenever reasonably possible.

## COMPLAINT INVESTIGATION

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Under Part 10 of PIPA, the Commissioner is generally responsible for monitoring how PIPA is administered. The Commissioner is also authorized to conduct investigations and audits to ensure compliance with any provision of PIPA.

Part 10 provides that the OIPC may investigate and attempt to resolve complaints that:

- duty imposed by PIPA or the regulations under PIPA has not been performed;
- an extension of time for responding to a request is not in accordance with PIPA;
- a fee required by an organization under PIPA is not reasonable;
- a correction of personal information requested under PIPA has been refused without justification;
- personal information has been collected, used, or disclosed by an organization in contravention of PIPA.

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 which 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 organization, a copy of the applicant's complaint to the organization and a copy of the organization'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 then. 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 organization an opportunity to respond to and attempt to resolve the complaint, the OIPC will normally refer the complainant to the organization before the OIPC takes further action. If the complainant believes the organization 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 organization, the OIPC will provide the organization with notice of the complaint and refer the file to an Investigator for investigation.

PIPA permits, but does not require, the OIPC to give a copy of a complaint to the organization involved or any other person the OIPC considers appropriate.

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 organization 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 PIPA 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 37 of PIPA provides that, if an organization asks, the OIPC may authorize the organization to disregard requests for personal information or requests for correction of personal information, that:

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

An organization's application to the OIPC for authorization to disregard an individual's request for, or correction of, personal information must be made in writing, and it must include the following information:

- the name of the person making the requests the organization is applying to disregard;
- the dates and descriptions of the requests for information that the organization is applying to disregard;
- an explanation as to how responding to the request(s) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the request and/or an explanation as to how the request(s) is frivolous or vexatious; and
- the proposed remedy the organization is seeking.

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, the Investigator will decide whether all or part of it should proceed to an inquiry under PIPA.

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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 request for personal information;
- (c) a brief explanation of what the applicant wants reviewed; and
- (d) a copy of the organization'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 then.

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

Where an applicant has not given the organization an opportunity to respond to and attempt to resolve a request for review, the OIPC may, under s. 38(4) of PIPA, 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. 50 of PIPA.

## B. NOTICE OF REVIEW

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

## C. APPLICATION OF NEW EXCEPTIONS

If, during the mediation process (see section D below), the organization decides to apply a new exception to disclosure of the information 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 organization as a supplement to the original response to the request for personal information, not as a new response.

If an organization 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 organization 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. 49 of PIPA, 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 information to which the applicant is entitled under PIPA.

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 to do so.

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. 50 OF PIPA

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. 50 of PIPA. Considerations for the exercise of that discretion include whether:

- 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 PIPA or fall outside the scope of PIPA;
- the review is frivolous, vexatious or otherwise an abuse of process;

- the review is trivial or no meaningful remedy is required or available under PIPA;
- 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 be adjudicated at an inquiry, the parties will be given an opportunity to be heard.

## 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 the OIPC’s website under “Tools & Guidance”

### B. INVESTIGATOR’S FACT REPORT

Before any inquiry begins, 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 PIPA 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 and the organization. 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 organization and any other appropriate person given notice under s. 48(1)(b) of PIPA.

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 PIPA. 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 information in dispute;
- changes to or waivers of fees assessed by the organization.

## **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.



