

Public Body Responding to a Third Party Access Complaint

These are guidelines to assist you in understanding the third party access complaint process under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015). You can find additional resources on our [website](#).

Third Party Access Complaints

A person who receives notification from a public body that the public body intends to release their personal information or third party business information in response to an access request may make a complaint to the Office of the Information and Privacy Commissioner (OIPC).

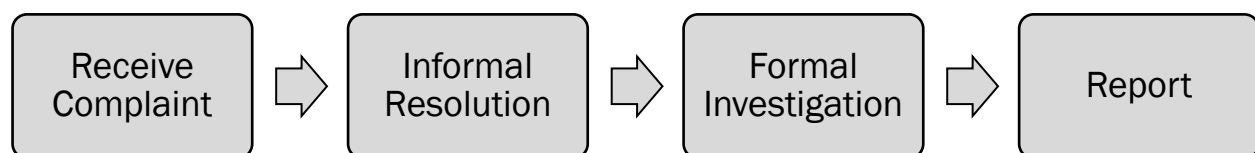
A third party access complaint does not suspend your deadline for responding to an access request. You must still provide your final response to the applicant within 20 business days of receiving the request unless OIPC approves a time extension. However, in your final response you must not release any records or parts of records that are the subject of the third party access complaint. You may not release these records, if you release them at all, until after we resolve the complaint and the complainant has exhausted all recourse under ATIPPA, 2015.

Remedies

Following an investigation of a third party access complaint, the Commissioner may recommend that a public body apply section 39 or section 40 to withhold information from an access to information applicant. The Commissioner may also recommend that the public body release the information.

The Complaint Process

1. OIPC receives a complaint. We will provide the complaint to the public body and you will have 10 business days to respond. The complainant also has 10 business days to make any submissions or arguments in support of their complaint.
2. OIPC will generally work with you and the complainant to try to reach an informal resolution of the complaint.
3. If we have not resolved the complaint, OIPC may conduct a formal investigation of any unresolved issues.
4. If necessary, within 65 business days OIPC will issue a Commissioner's report with recommendations for the public body.



We explain the steps in this process in more detail below.

Receiving a Complaint and Making Submissions

After our Office receives a complaint, we will assign it to an Access and Privacy Analyst (Analyst). The Analyst will contact you to notify you of the complaint. The Analyst will ask you to provide documents and written representations (submissions) relevant to the complaint. Your response to our Office is due within 10 business days from that date. This response must include the following:

- the applicant's access request;
- your section 19 notice to the complainant;
- your decision letter in response to the access request;
- any correspondence between you and the complainant;
- a copy of the records at issue you intend to release with any redactions you intend to apply;
- a copy of the records at issue you intend to release, without redactions; and
- submissions in support of your decision, including your reasons for disclosing records and any other information that you wish to provide.

You should provide these documents as clearly labelled, separate files. Along with an exact copy of the records at issue that you intend to provide to the applicant, you must provide us with a copy of the responsive records at issue without redactions. This copy should be an "audit" copy that discloses all information at issue but indicates what information, if any, the public body will withhold from the applicant.

If you do not provide your submissions within 10 business days, we will proceed with the investigation based on the relevant information available to OIPC. Without your written submissions, it is unlikely that we will be able to resolve the matter informally, and we will likely have to move the matter to a formal investigation and issue a Commissioner's report. If you are unable to provide written submissions, you should contact OIPC to explain why and to discuss acceptable alternatives.

Our Office will not release any records or reveal any information that the records contain.

Burden of Proof

If the complaint is about a public body intending to disclose records that contain **personal information**, the public body bears the burden of proving, on a balance of probabilities, that it has followed ATIPPA, 2015 and that such disclosure is not contrary to the Act. You will need to provide detailed and convincing evidence for why you believe the public body may disclose the personal information in question. You should include any legislation, case law, policy documents, or other relevant background information that you believe support the public body's position.

If the complaint is about a public body intending to disclose records that contain third party **business information** to which the complainant believes section 39 should apply, the complainant bears the burden of proving, on a balance of probabilities, that the public body

must refuse access under ATIPPA, 2015. While the complainant bears the burden of proof, your submissions should explain why you believe the information does not meet the three-part test at section 39. You should also explain your decision to notify the complainant under section 19. For more information on the application of section 39, please see our [guidance document](#) on this subject. If this matter is in relation to public procurement, please see our additional [guidance document](#).

Informal Resolution

The Analyst will usually focus on resolving the matter informally during the first 30 business days of an investigation. With the parties' agreement we may extend this period up to a maximum of an additional 20 business days.

During informal resolution, the Analyst will use your submissions as well as the submissions we receive from the complainant to understand the nature of the complaint and attempt to identify possible opportunities to resolve the complaint in a way that satisfies both the complainant and the public body. Generally, the Analyst will provide you and the complainant with an assessment after reviewing your submissions, the records, and the complainant's submissions.

The informal resolution period is relatively short, so it is important that you respond promptly to the Analyst's questions or requests. If you do not participate in the process we may proceed to a formal investigation without your input.

Possible informal resolution of a complaint may include:

- the public body concluding that sections 39 or 40 apply to some or all of the information and agreeing to withhold that information;
- the parties agreeing that sections 39 or 40 do not apply to the records and therefore the public body is to release them; or
- other outcomes that are agreeable to the complainant and the public body and compliant with ATIPPA, 2015.

Formal Investigation

If there are any issues in the complaint that we have not resolved in the informal resolution period, then our Office may conduct a formal investigation and, if necessary, issue a report with the Commissioner's recommendations. If the Analyst believes more information is necessary, they will ask you to provide further submissions and give you a deadline. We might not consider submissions that we receive after that deadline.

The Commissioner may decide not to conduct a formal investigation in limited circumstances under section 45 of ATIPPA, 2015. Should the Commissioner make this decision, we will notify you of the reason.

Commissioner's Report

ATIPPA, 2015 requires our Office to complete an investigation within 65 business days of receiving a complaint. If a report is required, we must write and release it by that deadline. OIPC publishes Commissioner's reports on our website and we will send you a copy.

OIPC will consider your submissions and the complainant's submissions during the report process. We may quote your submissions in the Commissioner's report. If you have provided submissions or other information that you feel is confidential that you do not want us to quote, you should notify the Analyst. However, procedural fairness requires the Commissioner to provide reasons for any decisions and recommendations. Therefore, we may still need to explain your position on the matter.

The Commissioner's report may contain recommendations that the public body:

- provide access to a record or part of a record;
- refuse access to a record or part of a record; or
- make improvements to its access to information process.

After you receive the Commissioner's report, the head of the public body has 10 business days to decide whether to follow the Commissioner's recommendations. Regardless of the public body's decision, the public body must give written notice of its decision to the complainant, our Office, and any other person who received the report.

If you must notify additional parties, you must ensure you do not disclose personal information in your correspondence and you should reference parties as "Applicant" or "Third Party."

If the public body decides to provide access to a record or part of a record, contrary to the complainant's request to refuse access, then you must notify the complainant of their right to appeal that decision to Court. You must not release any such records until the deadline for the complainant to appeal your decision passes (after ten business days have elapsed from the date the complainant receives your response to the Commissioner's report). If the complainant provides you with a copy of their notice of appeal within that time period, you must not release the records, except as the Court directs.

For more information about ATIPPA, 2015 please consult the latest version of the ATIPP Office's [Access to Information Policy and Procedures Manual](#).

If you have any questions or concerns about the complaint process, please do not hesitate to contact our Office at:

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St. John's, NL A1B 3V8
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