

Public Body Responding to an Access Complaint

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

Access Complaints

A person who makes an access to information request to a public body may make a complaint to the Office of the Information and Privacy Commissioner (OIPC) about a public body:

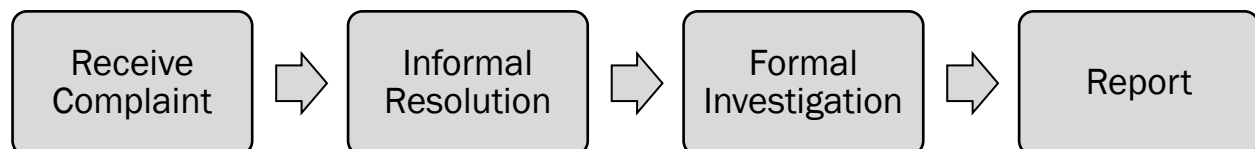
- refusing (or partially refusing) to give access to records;
- failing to respond to the request within 20 business days;
- not conducting a reasonable search for records or not assisting the applicant; or
- deciding to charge costs for searching for records.

Remedies

Following an investigation of an access complaint, the Commissioner may recommend that a public body provide access to a record, continue to withhold a record, reconsider a decision to refuse access to a record, or make improvements to its access to information process.

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 complainant’s access request;
- your decision letter in response to the complainant’s access request;
- any correspondence between you and the complainant;
- a copy of the records sent to the complainant;
- all records responsive to the request, without redactions; and
- submissions in support of your decision, including (where applicable):
 - your reasons for applying any exceptions to access;
 - your reasons for charging costs for searching for records;
 - a description of your search for records;
 - an explanation for the delay in responding to the request; or
 - 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 (if any) that you provided to the complainant, you must provide us with a copy of all responsive records without redactions. This copy should be an “audit” copy that discloses all information but indicates what information the public body withheld from the complainant.

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 highly unlikely that the public body will meet its burden of proof, 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. The release of additional records, if any, is the public body’s responsibility.

Burden of Proof

The public body bears the burden of proving, on a balance of probabilities, that it has followed ATIPPA, 2015 in responding to an access request. Your submissions should do more than simply identify which provisions of ATIPPA, 2015 the public body believes apply – you will need to provide detailed and convincing evidence for why you believe the public body may (or must) withhold information from the complainant. If you base the exception on the possibility that disclosure will cause harm, you will typically need to demonstrate that there is a “reasonable expectation of probable harm” that is more than just speculation. You should include any

legislation, case law, policy documents, or other relevant background information that you believe support the application of any exceptions to access.

Public Interest

If the public body withheld information from the complainant under sections 28, 29, 30(1), 32, 34, 35, 36, or 38, your submissions should explain how the public body considered the public interest in the information and why the public body believes that the reason for withholding the information outweighs any public interest. For more information about the public interest override at section 9 of ATIPPA, 2015, please see our [guidance document](#) on this subject.

Applying Additional or Alternate Exceptions

If the public body intends to apply any discretionary exceptions to access that you did not apply in your final response to the complainant's access request, you must inform the complainant and our Office within 10 business days of receiving notice of our investigation. OIPC will not consider any discretionary exceptions that the public body raises after this period.

Deemed Refusal Complaints

If the complaint is about the public body's failure to respond to an access request within 20 business days (or any new deadline this Office approved), then your submissions must address why the public body was unable to meet the deadline.

Reasonable Search Complaints

If the complainant is alleging that the public body has not located responsive records or that your response was incomplete, then your submissions should include the following details of the search the public body conducted for responsive records:

- the steps you took to identify and locate records;
- where you searched (e.g. paper files, databases, emails, off-site storage locations, etc.);
- the types of searches you conducted (e.g. keyword search of email or database, manual search of paper files, etc.);
- when the searches took place;
- who conducted the searches; and
- why the public body believes no records exist or why no further records exist.

For additional information on responding to a reasonable search complaint, please see our [guidance document](#) on this subject.

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.

If you agree to release any further records or information to the complainant, the public body is responsible for sending those records to the complainant. You should copy the Analyst on any correspondence releasing records.

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 conducting a further search for records;
- the public body releasing additional records or parts of records;
- the public body confirming that no responsive records exist; or
- other outcomes that are agreeable to the complainant and the public body and compliant with ATIPPA, 2015.

In some cases, our initial assessment of a complaint may conclude that the public body responded to the request properly and the complainant may choose to accept the public body's earlier response and we will close our investigation.

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;
- continue to refuse access to a record or part of a record;
- reconsider its decision to 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 the public body decides not to provide the complainant with records (because it has agreed with the Commissioner's recommendation to withhold them), then you must notify the complainant of their right to appeal that decision to Court.

If the public body disagrees with the Commissioner's recommendation to disclose records, then the public body must apply to Court to request a declaration that it does not have to follow the Commissioner's recommendations. You must notify the complainant of this process.

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:

Office of the Information and Privacy Commissioner
PO Box 13004, Station A
St. John's, NL A1B 3V8
Phone: (709) 729-6309 Fax: (709) 729-6500
Toll Free: 1-877-729-6309
commissioner@oipc.nl.ca
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