



Guide to OIPC NS Processes

Freedom of Information and Protection of Privacy Act (FOIPOP)

Municipal Government Act (MGA)

Privacy Review Officer Act (PRO)

Office of the Information and Privacy Commissioner for Nova Scotia

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General

Unless they are defined below, words in this document have the meanings given to them in *FOIPOP*, *MGA* and *PRO*. The following definitions apply in this document:

“access request” means a request for records made to a public body or municipality under *FOIPOP* or the *MGA*.

“applicant” means a person who has made an access request or privacy complaint.

“appropriate person” means a person to whom the OIPC gives notice under section 37(2)(d) of *FOIPOP* or section 490(2)(d) of the *MGA*.

“Commissioner” is the person appointed as the Review Officer under *FOIPOP* and the *MGA* and as the Privacy Review Officer under the *PRO*.

“complaint” means a privacy complaint under the *PRO*.

“exemption” means any exemption to the right of access to records set out in sections 12 to 21 of *FOIPOP* and sections 472 to 481 of the *MGA*.

“*FOIPOP*” means the *Freedom of Information and Protection of Privacy Act*.

“*in camera*” means privately.

“Intake Manager” means an individual employed or retained by the OIPC as an Intake Manager.

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

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

“*MGA*” means the *Municipal Government Act*.

“municipality” means a municipality as defined in section 461(e) of the *MGA*.

“Notice of Formal Review” means a notice issued by the OIPC that a formal review will be held under the *FOIPOP*, *MGA* or *PRO*.

“OIPC” means the Office of the Information and Privacy Commissioner.

“*PRO*” means the *Privacy Review Officer Act*.

“public body” means a public body as defined in section 3(1)(j) of *FOIPOP*.

“third party” has the meaning given in section 3(1)(m) of *FOIPOP* and section 461(k) of the *MGA*.

Purpose and Role of the OIPC

The Office of the Information and Privacy Commissioner (OIPC) purpose is set out in four statutes. The Information and Privacy Commissioner serves as the “Review Officer” under the *Freedom of Information and Protection of Privacy Act, Part XX* of the *Municipal Government Act* and the *Personal Health Information Act* and as the “Privacy Review Officer” under the *Privacy Review Officer Act*.

The role of the OIPC is to provide independent oversight of compliance with these four statutes. One of the ways in which the OIPC carries out this role is by hearing requests for review and complaints from applicants and third parties. The OIPC also makes decisions in response to requests for time extensions from public bodies and municipalities who are processing access to information requests. This guide explains how the OIPC conducts reviews and complaints and makes decisions in response to time extension requests. This guide does not apply to reviews and complaints under the *Personal Health Information Act*.

Extending Time Limit for Responding

Public bodies and municipalities must respond to a request for records not later than 30 days after receiving a request and the applicant has met the requirements specified in section 7(2) of *FOIPOP* or section 467(2) of the *MGA*.

The circumstances in which the 30 day timeline may be extended are set out in section 9 of *FOIPOP* and section 469 of the *MGA*. Time may be extended with the permission of the OIPC.

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 or municipality should review the Time Extension Guidelines and complete the Time Extension Request form available at: <http://foipop.ns.ca/publicbodytools>.

Requests for Review – Access to Information

A. Requesting a Review

A request for review must be made to the OIPC in writing. The OIPC will accept requests for review by mail, fax or by email sent to the OIPC email address accessible on the OIPC’s website: www.foipop.ns.ca. A request may be made orally where an applicant has a limited ability to read and write or a 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 may be made using a Form 7 (applicant) or a Form 8 (third party). Both forms are available at: <http://foipop.ns.ca/forms>.

In order to file a request for review, applicants must deliver their request to the OIPC within 60 days after being notified of the decision under review. The third party must deliver a request for review within twenty days after notice is given. The OIPC may allow a longer period of time where the public body or municipality consents, where circumstances prevented the applicant or third party from delivering the request within the prescribed period, or where it is fair and reasonable or otherwise necessary and appropriate to do so.

B. Notice of Review

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

C. Application of New Exemptions

If, during the informal resolution or mediation process, the public body or municipality decides to apply a new exemption 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, third party and the OIPC as soon as practicable. The OIPC will treat any such decision by the public body or municipality as a supplement to the original response to the access request, not as a new response.

D. Informal Resolution and Mediation Process

The OIPC may, through mediation or informal resolution, attempt to settle a matter under review. Information resolution is conducted by the Intake Manager and/or by Investigators. Mediation is conducted by Investigators.

Informal Resolution

The purpose of informal resolution is to facilitate a settlement of the issue and to ensure that the applicant has received access to all records or information to which the applicant is entitled under *FOIPOP* or the *MGA*.

The OIPC will attempt to conclude all informal resolutions within 60 days of assignment of the file to an Investigator. The OIPC may extend the period for informal resolution if it is fair and reasonable or otherwise necessary or appropriate in the circumstances.

Material gathered during the informal resolution process may be reviewed by the Commissioner if the matter proceeds to a Formal Review.

Mediation

Parties may request that a mediation process occur instead of or in addition to informal resolution. Upon receipt of the request for mediation, the Investigator will determine whether or not mediation is appropriate in the circumstances. The mediation process must be completed within 30 days. The mediation process is separate from any subsequent Formal Review. This means that any information gathered from the parties during the mediation process is confidential and does not form part of the Formal Review. Therefore, if the matter proceeds to Formal Review, the parties must make new submissions directly to the Commissioner in support of their positions.

When a matter is not resolved through the informal resolution process or through mediation, it will be referred to the Commissioner to conduct a Formal Review.

Requests for Review – Privacy Complaints

Under the *Privacy Review Officer Act*, the Commissioner is responsible for monitoring how the privacy provisions of *FOIPOP* are administered. The OIPC is also authorized to conduct investigations to ensure compliance with these privacy provisions.

The OIPC may review alleged contraventions of the privacy provisions under *FOIPOP*. The Commissioner may only exercise her powers to investigate alleged privacy contraventions from a

person after the person who has requested the review has completed the use of the internal privacy complaint procedure of the public body to which the complaint was made.

Requests for review of privacy complaints made to public bodies must be made within 60 days of receipt of the public body's response to that privacy complaint. The OIPC may allow a longer period of time where the public body consents, where circumstances prevented the applicant from delivering the request within the prescribed period, or where it is fair and reasonable or otherwise necessary and appropriate to do so.

A request for review must be made to the OIPC in writing and may be made using the form available at: www.foipop.ns.ca. The OIPC will accept requests for review of privacy complaints by mail, fax or email sent to the OIPC email address accessible on the OIPC's website: www.foipop.ns.ca. A request for review of a privacy complaint may be made orally where an applicant has a limited ability to read and write or a 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.

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

- the applicant's name, address and telephone number (and any email address);
- an explanation of the circumstances giving rise to the privacy complaint; and
- 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 request for review of a privacy complaint complete until all the information described above, as applicable, has been provided to the OIPC.

Once all of the required material has been received, the OIPC will provide the public body with notice of the request for review and refer the file to an Investigator for investigation. The Investigator will gather evidence from both parties, may conduct interviews with witnesses and take whatever further steps are necessary to investigate the matter. Following the conclusion of the investigation, the Investigator will provide both parties with an opinion as to whether or not the privacy provisions of *FOIPOP* were contravened. The Investigator will also provide recommendations to remedy any identified issues and through this process, will attempt to informally resolve the matter.

Matters that do not settle through investigation and informal resolution will proceed to a Formal Review.

Formal Reviews

A. General

A Formal Review is a process wherein the Commissioner considers the issues in dispute, makes a decision and issues recommendations.

B. Notice of Formal Review

Formal Reviews are conducted in writing. Parties to Formal Reviews will be given written notice of the review. The notice will identify the outstanding issues and will specify a time period for parties to provide any further submissions they may have on the issues.

The Commissioner may adjourn a Formal Review or extend the timelines for it if it is fair and reasonable or otherwise necessary or appropriate in the circumstances.

C. Parties and Intervenors

The following persons are parties to the Formal Review and are entitled to make representations to the Commissioner in the course of the review:

- the person who applies for the review;
- a third party or applicant who is entitled to notice pursuant to *FOIPOP* or the *MGA*;
- the head of the public body whose decision is the subject of the review; and
- any other person the Commissioner considers appropriate.

The Commissioner may invite a person to participate in the review as an intervenor. The Commissioner may request comments from 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 Formal Review by an agent or lawyer at their own expense.

D. Submissions

The Notice of Formal Review will invite the parties to provide written submissions in support of their positions. Submissions are not normally exchanged between the parties.

In addition to the written submissions, material gathered for the purpose of informal resolution will be considered by the Commissioner when conducting a Formal Review.

Material gathered for the purpose of mediation will not be considered by the Commissioner when conducting a Formal Review unless both parties have given written consent to do so. Mediation material does not include information related to the factual outcomes of mediation such as changes in the issues or exceptions applied, changes to the scope of the records in dispute, or changes to fees assessed by the public body or municipality.

***In Camera* Submissions**

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 *FOIPOP* or the *MGA*. A party making a submission *in camera* must give written reason 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 Formal Review by providing the OIPC with a copy of its submission which clearly identifies all material proposed for submission *in camera*.

E. Written Report

Upon completing the Formal Review, the Commissioner will prepare a written report setting out her recommendations and the reasons for those recommendations. The Commissioner may make any recommendations with respect to the matter under review that she considers appropriate.

The OIPC will send a copy of the Review Report to the head of the public body, any party to the proceeding and any intervenor. Seven business days after the Review Report is provided to the parties the OIPC will publish the Review Report on its website.

Within 30 days of receipt of the Review Report, the public body or municipality must make a decision regarding the recommendations and communicate that decision to the OIPC and to all of the parties who received a copy.

Contact

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