



## Preparing for a Review Applicant Guidelines

### Introduction

This material is intended as advice only and is not binding on you as an Applicant.

It is important to note that the Office of the Information and Privacy Commissioner is a neutral party, which has a mandate to oversee the *Access to Information and Protection of Privacy Act (ATIPPA)*. This Office does not act as an advocate for any party involved in a review. Rather, we make sure that you obtain all the records you have a right to under the *ATIPPA*. All communication with this Office should focus only on issues relevant to the file at hand.

### Informal Resolution

One of the first steps taken by this Office in response to your Request for Review is to contact the public body in question and request copies of all the relevant records. The public body must provide the Commissioner the entire package of records, including those records that were disclosed to you and those that were withheld. This Office will not release any records to you or reveal any information in the records. Instead, an investigator assigned to your file will review both the records in question and the handling of your file by the public body. This will form the basis for informal discussion with the public body about whether it has released all of the records to which you are entitled, and whether it has discharged its duties under the *ATIPPA*. If necessary, a formal investigation into your file may result in the Commissioner making recommendations to the public body.

The time frame for resolving your complaint informally starts on the day this Office receives your Request for Review and lasts for 30 calendar days. If progress is being made to resolve your complaint at the informal stage, the time frame may be extended.

The informal resolution process is designed to provide an opportunity for both parties to discuss with the investigator, in confidence, their thoughts and opinions with respect to the information at issue. Information shared with an investigator during the informal resolution stage will **not** be communicated to the other party without your consent. Should you have any suggestions as to how the file could be resolved informally, please contact this Office right away. Informal resolution is successful when all parties are satisfied with the outcome. Successful informal resolution *may* conclude with the release of additional information, confirmation that no responsive records exist or acceptance of the public body's initial response. The file would then be closed.

As the period for informal resolution provided for in the *Access to Information and Protection of Privacy Act (ATIPPA)* is relatively short, it is extremely important that your responses to inquiries from this Office be prompt and complete. Informal resolution cannot work if any of the parties are not engaged in the process. For example, if additional information is released to you during the informal resolution stage it is important that you promptly review it and advise this Office if it is satisfactory or that wish to proceed to the formal investigation stage. Failure to actively participate at the informal resolution stage, if necessary, may result in the Commissioner declaring your review to have been abandoned and the file will be closed.

If attempts at an informal resolution are unsuccessful, the review of your complaint continues on to the formal investigation stage. You and the public body will both be given an opportunity to support your positions regarding access to the records in question by making a formal written submission.

### **Formal Investigation**

A public body bears the burden of proving that access to the records you requested must or should be refused under the *ATIPPA*. The burden is not on you as the Applicant to establish that an exception to access (identified in the *ATIPPA*) does not apply to the records you requested — it is up to the public body to make the case that a particular exception in the *ATIPPA* applies. This means that the public body must present reasons why the exception is appropriate for the part of the record that has been withheld from you.

In cases where no records are found or the public body says they do not exist, there is some expectation that you — the Applicant — will provide some basis for the belief that the record actually exists, or that a proper search for the record was not conducted.

Your submission should contain arguments in support of your position and would usefully focus on a detailed chronology of how your access to information request was handled by the public body. In the event that a written submission is not received by this Office within the designated time frame, the Commissioner's investigation will proceed based on the information currently on file as a result of your communication with this Office during efforts at informal resolution.

Your written submission laying out arguments in support of your position may be released in whole or in part to the other party and may be included in a Commissioner's report, should one be prepared. This means that parties should assume that any material included in their submissions will be read by the other party or by members of the public. If you have concerns about having your reasons disclosed, **please indicate that you wish to have part or all of your submission considered "confidential,"** along with your reasons for requesting this.

Should you have any questions or concerns about the Review process, please do not hesitate to contact this Office.