

Managing Your 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 party 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).

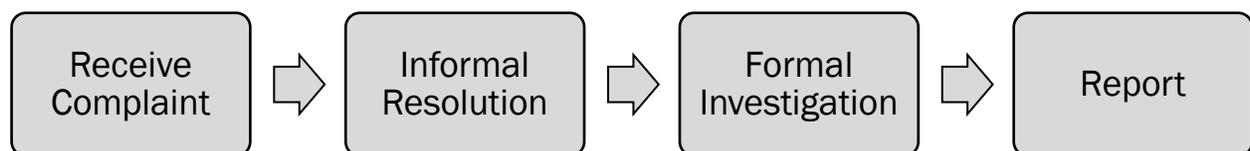
The only issues our Office will consider in the course of a third party access complaint are the applicability of section 39 or section 40 of ATIPPA, 2015. We will not consider arguments regarding other exceptions to access.

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 your complaint. We will provide your complaint to the public body and it will have 10 business days to respond. We will notify you that we have started an investigation and you will also have 10 business days to make any submissions or arguments in support of your position.
2. OIPC will generally work with you and the public body to try to reach an informal resolution of your 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 your complaint, we will assign it to an Access and Privacy Analyst (Analyst). The Analyst will contact you to confirm we have received your complaint and have started an investigation. You will then have 10 business days to provide any written submissions you wish to make to OIPC.

You may have provided details of your third party access complaint and the information you feel is relevant to support your position. However, if you did not provide your full position in your complaint, or if you feel more information or arguments are necessary, your written submissions are your opportunity to provide this information.

Upon receiving your complaint, the Analyst will also forward your complaint to the public body and request its submissions.

If your complaint is about a public body intending to disclose records that contain your **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. This means that you do not need to prove that the public body should not disclose the personal information in question. While the public body bears the burden of proof, your submissions are still important to help the Analyst understand your position and your complaint.

If your complaint is about a public body intending to disclose records that contain third party **business information** to which you believe section 39 should apply, you bear the burden of proving, on a balance of probabilities, that the public body must refuse access under ATIPPA, 2015. You will need to provide detailed and convincing evidence for why you believe the information meets the three-part test at section 39. You should include any legislation, case law, policy documents, or other relevant background information that you believe support your position. 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](#).

Your written submissions may be your only opportunity to put forward your position to OIPC. If you do not provide submissions within 10 business days, the investigation will proceed based on the information available to OIPC. If you are unable to provide written submissions, you should contact the Analyst assigned to your complaint to discuss alternatives. If there is any information in your submissions that you do not wish OIPC to disclose to the public body, you should notify the Analyst. Although you may provide any information to the Analyst that might help them investigate your complaint, it is not mandatory that you provide written submissions.

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 public body to understand the nature of the complaint and attempt to identify possible opportunities to resolve your complaint in a way that satisfies both you and the public body. Generally, the Analyst will provide you and the public body with an assessment after reviewing your submissions, the records, and the public body's submissions.

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

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. The Commissioner may also decide to refuse to investigate your complaint.

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 your 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 and advise you of your right to appeal to Court.

Commissioner's Report

ATIPPA, 2015 requires our Office to complete an investigation within 65 business days of receiving your 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 public body'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. We will not name you in the report, although the context will sometimes make it apparent which industry the report pertains to and readers may guess which parties might be involved.

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

If the public body decides to provide access to a record or part of a record, contrary to your request to refuse access, then you may appeal that decision to Court. You will receive information about the appeal process from the public body.

If you have any questions or concerns about the complaint process, please do not hesitate to contact the Analyst or 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
<https://www.oipc.nl.ca>