

Managing Your 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 may make a complaint to the Office of the Information and Privacy Commissioner (OIPC). You must make your complaint about a public body:

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

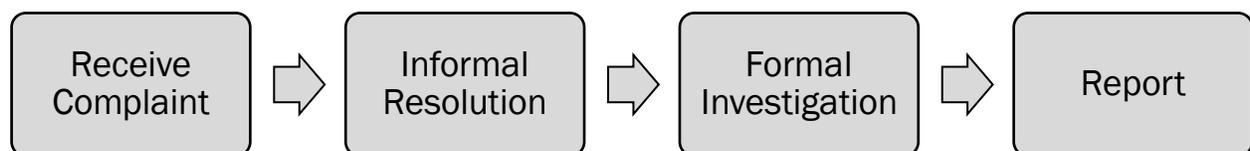
Remedies

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.

OIPC does not have the authority to require apologies, disciplinary action, compensation, penalties, or other sanctions.

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 access request and the information you feel is relevant to support your position with your complaint. 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.

The public body bears the burden of proving, on a balance of probabilities, that it has followed ATIPPA, 2015 in responding to your access request. This means that you do not need to prove that the public body should disclose the information you have requested. While the public body bears the burden of proof, your submissions are still important to help the Analyst understand your position and your complaint.

Written submissions ensure that we receive the arguments you wish to make in support of your complaint. For example:

- if you believe that records exist that are responsive to your request and that the public body did not provide them, your submissions should explain what those records are and why you believe they exist;
- if the public body withheld information from you under section 5 or any of the exceptions to access in sections 27 through 41, you can explain why you believe those exceptions do not apply; or
- if the public body withheld information from you under sections 28, 29, 30(1), 32, 34, 35, 36, or 38 and you believe there is a public interest in that information, your submissions must explain why you believe that public interest outweighs the reason for withholding the information. For more information about the public interest override at section 9 of ATIPPA, 2015, please see our [guidance document](#) on this subject.

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 access 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 to you or reveal any information that the records contain. The release of additional records, if any, is the public body's responsibility.

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 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 you 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 your request properly and then you may choose to accept the public body's earlier response and we will close our investigation.

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.

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 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 not to provide you with records (because it has agreed with the Commissioner's recommendation to withhold them), then you may appeal that decision to Court. You will receive information about the appeal process from the public body.

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 follow the Commissioner's recommendations. The public body must notify you of this, and you are entitled to become a party to the Court proceeding if you wish; however, it is not required. The Commissioner will usually go to Court in such cases and explain the rationale for our recommendations.

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

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