

# PHIA Guidelines

## Managing Your Access Complaint

These are guidelines to assist you in understanding the access to personal health information complaint process under the **Personal Health Information Act (PHIA)**. You can find additional resources on our [website](#).

### Access Complaints

You have a right to request access to your own personal health information. You must direct that request to a custodian (a person or organization who holds this information). If you have made a request to access your personal health information you may also make a complaint to the Office of the Information and Privacy Commissioner (OIPC). You must make your complaint about a custodian:

- refusing (or partially refusing) to give you access to records;
- failing to respond to your request within the legislation's time limit; or
- not conducting a reasonable search for records or not assisting you.

### Remedies

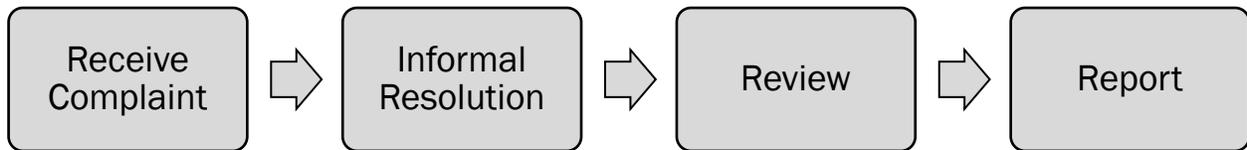
Following an investigation of an access complaint, the Commissioner may recommend that a custodian:

- provide access to a record;
- modify, stop, or not begin an information practice, policy, or procedure that contravenes PHIA; or
- implement an information practice.

The Commissioner may also issue a report in which there are no recommendations for the custodian. 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 custodian and it will have 14 days to respond. We will notify you that we have started an investigation and you will also have 14 days to make any submissions or arguments in support of your position.
2. OIPC will generally work with you and the custodian to try to reach an informal resolution of your complaint.
3. If we have not resolved the complaint, OIPC may conduct a review of any unresolved issues.
4. If necessary, OIPC will issue a Commissioner's report with recommendations for the custodian.



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 14 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 custodian and request its submissions.

The custodian bears the burden of proving, on a balance of probabilities, that it has followed PHIA in responding to your access request. This means that you do not need to prove that the custodian should disclose the personal health information you have requested. While the custodian 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 custodian did not provide them, your submissions should explain what those records are and why you believe they exist; or
- if the custodian withheld personal health information from you under any of the exceptions to access in section 58, you can explain why you believe those exceptions do not apply.

Your written submissions may be your only opportunity to put forward your position to OIPC. If you do not provide submissions within 14 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 custodian, 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 60 days of an investigation.

During informal resolution, the Analyst will use your submissions as well as the submissions we receive from the custodian 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 custodian. Generally, the Analyst will provide you and the custodian with an assessment after reviewing your submissions, the records, and the custodian's submissions.

Our Office will not release any records to you or reveal any personal health information that the records contain. The release of additional records, if any, is the custodian's responsibility.

During our efforts at informal resolution, 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 review without your input. The Commissioner may also decide to refuse to investigate your complaint.

Possible informal resolution of a complaint may include:

- the custodian conducting a further search for records;
- the custodian releasing additional records or parts of records;
- the custodian confirming that no responsive records exist; or
- other outcomes that are agreeable to you and the custodian and compliant with PHIA.

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

## Review

If there are any issues in your complaint that we have not resolved in the informal resolution period, then our Office may conduct a review 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 review in limited circumstances under section 67(3) of PHIA. 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

If necessary, our Office may write and release a report of our findings following an investigation of your access complaint. OIPC publishes Commissioner's reports on our website and we will send you a copy.

OIPC will consider your submissions and the custodian'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 custodian provide access to a record or part of a record or make improvements to its access to personal health information process. After the custodian receives the Commissioner's report with recommendations, it has 15 days to decide whether it will follow the Commissioner's recommendations. Regardless of the custodian's decision, the custodian must give written notice of its decision to you and our Office.

If the custodian disagrees with the Commissioner's recommendation to disclose records, then you may appeal that decision to Court. You will receive information about the appeal process from the custodian.

The Commissioner may decide not to make any recommendations. If there are no recommendations, the report will explain why and we will advise you of your right to appeal to Court.

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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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  
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