GENERAL

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Guide to OIPC processes (PIPA)



OFFICE OF THE INFORMATION & PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

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PURPOSE OF THIS GUIDANCE DOCUMENT

This Guide addresses the most common procedures that the Office of the Information and Privacy Commissioner (OIPC) uses under the *Personal Information Protection Act* (PIPA).

For all complaints and requests for review, the OIPC's policy is to encourage the parties to agree to a resolution or settlement of the issues. OIPC staff will generally attempt mediation of all matters. However, OIPC staff may also decline or discontinue an investigation or review in certain circumstances[1] and are authorized to decide whether a matter will proceed to the formal inquiry process.

GENERAL

Unless they are defined below, words in this document have the meanings given to them in PIPA. The following definitions apply in this document:

"access request" is an individual's request to an organization for access to the individual's personal information under the control of the organization;

"Adjudicator" means an individual to whom the Commissioner has delegated his or her inquiry and decision-making duties, powers and functions;

"applicant" means an individual who makes a request for access to, or correction of, his or her personal information under s. 27 of PIPA;

"Commissioner" means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act* and includes an Acting Information and Privacy Commissioner;

"Complainant" means an individual who has made a complaint under Part 10 of PIPA;

"complaint" means a complaint under PIPA so designated by the OIPC;

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"day" does not include a Saturday or a holiday as defined in the Interpretation Act[2]

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[1] See the OIPC's policies for declining or discontinuing an investigation or review: oipc.bc.ca/CIP.

[2] On the date of this document, "holiday" includes Sunday, Christmas Day, Good Friday, Easter Monday, Canada Day, Victoria Day, British Columbia Day, Family Day, Labour Day, National Day for Truth and

"employee personal information" means information about an individual that is collected, used, or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

"*in camera*" means privately;

"inquiry" means an inquiry held under Part 11 of PIPA;

"Case Review Officer" means an individual employed or retained by the OIPC as a Case Review Officer;

"Investigator" means an individual employed or retained by the OIPC as an Investigator;

"OIPC" means the Office of the Information and Privacy Commissioner for British Columbia and, in relation to the exercise of powers, duties and functions of the Commissioner, includes the exercise of those powers by a delegate of the Commissioner;

"organization" includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include:

(a) an individual acting in a personal or domestic capacity or acting as an employee,

(b) a public body,

(c) the Provincial Court, the Supreme Court or the Court of Appeal,

(d) the Nisga'a Government, as defined in the Nisga'a Final Agreement, or

(e) a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor.

"personal information" means information about an identifiable individual and includes employee personal information, but does not include contact information or work product information;

"PIPA" is the *Personal Information Protection Act*;

"work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include

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Reconciliation, Remembrance Day, New Year's Day and December 26. The *Interpretation Act* provisions in force on the relevant date will apply.

personal information about an individual who did not prepare or collect the personal information.

EXTENDING THE TIME LIMIT FOR RESPONDING

Section 29 of PIPA provides that an organization must respond to an applicant no later than 30 days after receiving a request unless:

- the time limit is extended under s. 31;
- the organization applies under s. 37 of PIPA to the OIPC for authorization to disregard the request; or
- the applicant requests a review relating to a fee;

Section 31(1) of PIPA provides that an organization may extend the time to respond to a request for personal information from 30 days to up to 60 days without getting permission from the OIPC if:

(a) the individual requesting access does not give enough detail to enable the organization to identify the personal information requested;

(b) a large amount of personal information is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the organization; or

(c) more time is needed to consult with another organization or with a public body before the organization is able to decide whether or not to give the access to the requested document(s).

An organization may not take more than 60 days to respond to a request for personal information without getting permission from the OIPC. An application for OIPC permission to extend the response time must be made in writing and must include the following information:

- The reasons for asking for a time extension;
- Any organization file number for the request;
- A brief description of the personal information requested;
- The date the organization received the request;
- The date the organization sent a fee estimate and the date fees or a fee deposit were paid, if applicable;
- The date the organization took its own time extension and the reasons;
- The date the current response time expires;
- Any relevant correspondence to the individual concerned respecting previous time extensions;

- If the time extension is being requested because a large amount of personal information was requested or must be searched:
    - the amount of personal information involved including the approximate number of pages,
    - an explanation of how meeting the current response time would unreasonably interfere with the organization's operations; and
- If the time extension is being requested because more time is needed to consult with another organization or public body:
    - what other organizations or public bodies have been, or will need to be, consulted about the request for personal information,
    - the reasons for the consultation,
    - the date on which the organization expects to complete its consultations with other organizations or public bodies,
    - the proposed new response date or the number of additional days requested.

An application for OIPC permission to extend the response time should be made at the earliest opportunity, and before the expiry of the current response time.

The OIPC applies its time extension framework for public bodies under FIPPA to applications for permission to extend the response time received from the organizations under PIPA.

In cases in which the OIPC permits an extension of the response time, the organization should still expedite its response to the individual concerned by releasing information in stages whenever reasonably possible.

COMPLAINTS

Under Part 10 of PIPA, the Commissioner is generally responsible for monitoring how PIPA is administered. The Commissioner is also authorized to conduct investigations and audits to ensure compliance with any provision of PIPA.

Part 10 provides that the OIPC may investigate and attempt to resolve complaints that:

- the duty imposed by PIPA or the regulations under PIPA has not been performed;
- an extension of time for responding to a request is not in accordance with PIPA;
- a fee required by an organization under PIPA is not reasonable;
- a correction of personal information requested under PIPA has been refused without justification;

- personal information has been collected, used, or disclosed by an organization in contravention of PIPA.

A. Refer Back Policy

Unless circumstances warrant otherwise, it is the OIPC's policy to refer a Complainant back to the organization where the Complainant has not given the organization an opportunity to respond to and attempt to resolve the complaint.

B. Making a Complaint

A complaint must be made to the OIPC in writing. The OIPC will accept complaints through the online webform available on the OIPC's website at https://www.oipc.bc.ca/forms/individuals/complaints/ or by fax or physical mail.

A complaint may be made verbally where a Complainant has a limited ability to read and write or a physical disability which impairs the Complainant's ability to make a written complaint. Where a person makes a verbal complaint, the OIPC will put it in writing. After the Complainant has reviewed the complaint, he or she must acknowledge the document.

A complaint must provide enough information for the OIPC to understand and describe the issue (one issue at a time) involved and should be made within a reasonable time after the Complainant became aware of the alleged incident giving rise to the complaint. A Complainant must provide all of the following:

(a) The Complainant's name, address and telephone number. If the Complainant prefers to communicate by fax or email, this information should also be included;

(b) An explanation of the circumstances giving rise to the complaint (max 500 words); and

(c) Where the OIPC has referred the Complainant to the organization, a copy of the applicant's complaint to the organization and a copy of the organization's response to the complaint, if any.

If the complaint concerns an access request, the Complainant must also provide:

(d) a copy of their original access request

(e) a copy of the organization's response to their access request, if any

The OIPC will not consider a complaint complete until all of the information described above, as applicable, has been provided to the OIPC and the OIPC will not act on the complaint until then. The OIPC may request that a Complainant explain any undue delay in submitting the complaint to the OIPC.

Complaints that exceed submission limits may not be considered and could result in the rejection of the complaint.

If you are using an LLM (such as ChatGPT, CoPilot, or Perplexity) to submit a complaint to OIPC, please refer to OIPC guidance. Use caution about what you share, watch for inaccuracies and hallucinations, be sure to put privacy first, and know your rights. Please double check legal decisions, OIPC orders, and other sources that an LLM cites for accuracy.

Please note that your name and contact information, as well as a copy of your complaint, will be shared with the organization that is the subject to your complaint.

C. Decline to Investigate Policy

The OIPC may decline to investigate a matter in certain circumstances. The policy and criteria for declining to investigate are available at oipc.bc.ca/CIP.

A Complainant may appeal the OIPC's decision to decline to investigate by submitting an application to the OIPC, stating "request for reconsideration" and the relevant file number in the subject line, within 15 business days of the instruction letter being sent.

The Complainant must demonstrate how their file meets the reconsideration criteria outlined in section G.

D. Notice of Complaint

PIPA permits, but does not require, the OIPC to give a copy of a complaint to the organization involved or any other person the OIPC considers appropriate.

E. Investigation

An investigation file may be assigned to a Case Review Officer if there appears to be an opportunity for early resolution of the matter. Otherwise, investigation files will be queued for assignment to an Investigator.

In conducting a complaint investigation, the Investigator exercises powers delegated by the Commissioner to investigate, make findings, and dispose of the complaint.

The Investigator will ensure that all parties have an opportunity to be heard. However, submissions during this phase are limited to 10 pages (minimum 12-point font), inclusive of attachments, unless otherwise directed by the investigator.

F. Discontinuing an Investigation Policy

The Investigator may discontinue an investigation in certain circumstances. The policy and criteria for discontinuing an investigation are available at: oipc.bc.ca/CIP.

A Complainant may appeal the OIPC's decision to discontinue an investigation by submitting an application to the OIPC, stating "request for reconsideration" and the relevant file number in the subject line, within 15 business days of being advised of the decision.

The Complainant must demonstrate how their file meets the reconsideration criteria outlined in section G.

G. Reconsiderations

If an organization or Complainant has concerns about an investigation, either party can request a reconsideration. Requests for reconsideration are not an appeal on the merits of the Case Review Officer or Investigator's decision; rather, they are limited to the grounds set out below. While there is no statutory obligation under PIPA to reconsider the outcome of a complaint investigation, it is OIPC policy to review requests for reconsideration and to re-open a file when there are reasonable grounds to do so. A file *may* be re-opened under the following circumstances:

- When it is necessary to correct a clerical error, an accidental error, or an omission by the Case Review Officer or Investigator;
- When the finding has resulted from a breach of natural justice or administrative fairness;
- When relevant issues were not addressed; or
- Where new evidence or facts are brought forward that were not previously available to the individual seeking the reconsideration.

If the file is re-opened, the possible outcomes are to:

(a) confirm all or part of the findings of the Case Review Officer or Investigator;

(b) direct further investigation by a Case Review Officer or Investigator on all or part of the issues raised;

(c) determine that no further action should be taken with respect to all or part of the complaint if further action would not serve the interest of a just determination of the issues raised in the complaint; or

(d) refer the matter to a hearing.

REQUESTS FOR REVIEW

A. Requesting a Review

A request for review must be made to the OIPC in writing. The OIPC will accept requests for review through the online webform available on the OIPC's website athttps://www.oipc.bc.ca/forms/individuals/complaints/, or by fax or physical mail.

A request may be made orally where an applicant has a limited ability to read and write or a physical 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 must provide enough information for the OIPC to understand and describe the issues involved. An applicant must provide all of the following:

(a) The applicant's name, address and telephone number. If the applicant prefers to communicate by fax or email, this information should also be included;

(b) A copy of the request for personal information (if the request was made by email, please ensure the copy includes the date);

(c) A copy of the organization's decision; and

(d) A brief explanation of what the applicant wants reviewed (500 words max).

The OIPC will not consider a request for review complete until all of the information described above has been provided to the OIPC and the OIPC will not act on the request until then.

Requests for review that exceed submission limits may not be considered and could result in the rejection of the request for review.

If you are using an LLM (such as ChatGPT, CoPilot, or Perplexity) to submit a complaint to OIPC, please refer to OIPC guidance. Use caution about what you share, watch for inaccuracies and hallucinations, be sure to put privacy first, and know your rights. Please double check legal decisions, OIPC orders, and other sources that an LLM cites for accuracy.

The applicant must deliver a request for review to the OIPC within 30 days after being notified of the organization's decision. The OIPC may allow a longer period of time where the organization consents or where circumstances prevented the applicant from delivering the request within the 30-day period.

Where an applicant has not given the organization an opportunity to respond to and attempt to resolve a request for review, the OIPC may, under s. 38(4) of PIPA, require the applicant to attempt to resolve the request for review in the way directed by the OIPC before the OIPC begins or continues an inquiry under s. 50 of PIPA.

B. Decline to Review Policy

The OIPC may decline to review a matter in certain circumstances. The policy and criteria for declining to review are available at oipc.bc.ca/CIP.

If an organization or applicant has concerns about an investigation, either party can request a reconsideration of the decision to decline to review. A request for reconsideration must be submitted to the OIPC, clearly identifying the relevant file number in the subject line, within 15 business days of being advised of the decision.

Requests for reconsideration are not an appeal on the merits of the Case Review Officer's decision; rather, they are limited to the grounds set out below. While there is no statutory obligation under PIPA to reconsider the decision to decline to investigate, it is OIPC policy to review requests for reconsideration and to re-open a file when there are reasonable grounds to do so. A file *may* be re-opened under the following circumstances:

- When it is necessary to correct a clerical error, an accidental error, or an omission by the Case Review Officer;
- When the finding has resulted from a breach of natural justice or administrative fairness;
- When relevant issues were not addressed; or
- Where new evidence or facts are brought forward that were not previously available to the individual seeking the reconsideration.

If the file is re-opened, the possible outcomes are to:

(a) confirm all or part of the findings of the Case Review Officer;

(b) direct further investigation by a Case Review Officer or Investigator on all or part of the issues raised;

(c) determine that no further action should be taken with respect to all or part of the complaint if further action would not serve the interest of a just determination of the issues raised in the complaint; or

(d) refer the matter to a hearing.

C. Notice of Request for Review

The OIPC will give a copy of the request for review to the organization concerned and any other person that the OIPC considers appropriate under s. 48(1)(b).

D. Application of New Exceptions

If, during the mediation process (see section E below), the organization decides to apply a new exception to disclosure of the information other than those specified in its response to the applicant, it must make that decision and communicate it in writing to the applicant and the OIPC as soon as practicable. The OIPC will treat any such decision by the organization as a supplement to the original response to the request for personal information, not as a new response.

E. Mediation

The OIPC may, under s. 49 of PIPA, refer each request for review to an Investigator for mediation. A review file may be assigned to a Case Review Officer if there appears to be an opportunity for early resolution of the matter. Otherwise review files will be queued for assignment to an Investigator.

The intent of the mediation process is to facilitate a settlement of the issues and to ensure that the applicant has received access to all information to which the applicant is entitled under PIPA. The mediation process is separate from any subsequent inquiry. Submissions during mediation are limited to 10 pages (minimum 12-point font), inclusive of attachments, unless otherwise directed by the investigator.

The OIPC may extend the period for mediation if it is fair and reasonable or otherwise necessary or appropriate in the circumstances to do so.

Where a request for review is not settled during mediation, it may be referred for an inquiry.

F. Discontinuing a Review Policy

The Investigator may discontinue a review in certain circumstances. The policy and criteria for discontinuing a review are available at oipc.bc.ca/CIP.

If an organization or applicant has concerns about an investigation, either party can request a reconsideration of the decision to discontinue a review. A request for reconsideration must be submitted to the OIPC, clearly identifying the relevant file number in the subject line, within 15 business days of being advised of the decision.

Requests for reconsideration are not an appeal on the merits of the Investigator's decision; rather, they are limited to the grounds set out below. While there is no statutory obligation under PIPA to reconsider the outcome of a file, it is OIPC policy to review requests for reconsideration and to re-open a file when there are reasonable grounds to do so. A file *may* be re-opened under the following circumstances:

- When it is necessary to correct a clerical error, an accidental error, or an omission by the Investigator;
- When the finding has resulted from a breach of natural justice or administrative fairness;
- When relevant issues were not addressed; or
- Where new evidence or facts are brought forward that were not previously available to the individual seeking the reconsideration.

If the investigation is re-opened, the possible outcomes are to:

(a) confirm all or part of the findings of the Investigator;

(b) direct further investigation by an Investigator on all or part of the issues raised;

(c) determine that no further action should be taken with respect to all or part of the complaint if further action would not serve the interest of a just determination of the issues raised in the complaint; or

(d) refer the matter to a hearing.

G. Decision Not to Hold an Inquiry under s. 50 of PIPA

If a request for review is not settled, the OIPC has discretion to decide whether all or part of the matter will proceed to an inquiry under s. 50 of PIPA. Considerations for the exercise of that discretion include whether:

- the review has no reasonable prospect of succeeding, including because it is plain and obvious that requested records are subject to an exception to disclosure in PIPA or fall outside the scope of PIPA;
- the review is frivolous, vexatious, or otherwise an abuse of process;
- the review is trivial or no meaningful remedy is required or available under PIPA;
- the substance of the review is more appropriately dealt with in another proceeding or process; or
- The discontinuing a review policy is applicable to the issue(s).

A party may also apply in writing to the OIPC to ask that all or part of a request for review not proceed to an inquiry.

Before the OIPC decides that all or part of a request for review will not be adjudicated at an inquiry, the parties will be given an opportunity to be heard.

INQUIRIES

A. General

An inquiry is a process wherein the Commissioner or an Adjudicator considers the issues in dispute, makes a decision, and issues an order.

Inquiries are generally conducted in writing.

B. Investigator's Fact Report

Before any inquiry begins, in most cases the Investigator will prepare a fact report:

(a) providing a chronology of the request, review and inquiry processes;

(b) setting out the facts and indicating any that are in dispute;

(c) describing the records and issues in dispute and any issues no longer in dispute; and

(d) specifying which provisions of PIPA are in issue.

The fact report will not include details relating to any attempts the parties made to settle the matter through mediation, other than to note any issues that have been settled and are no longer in dispute.

Before the Notice of Inquiry is issued, the Investigator will distribute the fact report to the parties. If they have any objections to the contents of the fact report, they must raise them with the Investigator within the specified time frame.

C. Notice of Inquiry

If the matter proceeds to inquiry, the OIPC will issue a notice of inquiry, along with the finalized fact report, if one was produced, to the parties. The parties will be allowed to make written submissions in accordance with a schedule set out in the notice of inquiry.

For further information about the inquiry process, see the OIPC's *Instructions for Written Inquiries*, which is available on our website under "Tools & Guidance."

DEEMED REFUSAL REVIEWS

PIPA sets out the time within which an organization must respond to a request for access to information in s. 29. The usual time for response is 30 days after receiving a request described in s. 23(1), but extensions of the response time are possible under s. 31 in appropriate circumstances.

Section 47(3) of PIPA says that the failure by an organization to respond in time is a review. The OIPC treats the failure of an organization to respond in time as a deemed refusal review. This policy sets out the expedited process the OIPC follows for deemed refusal reviews.

OIPC Evaluates the Review

1. Upon receipt of the deemed refusal review, the OIPC reviews the documents supplied to ensure that:
    (a) the applicant has provided a copy of the original request for information;
    (b) the applicant has provided a copy of the organization's letter acknowledging the access request, if any;
    (c) the issue properly qualifies as a deemed refusal that should be considered under the OIPC's deemed refusal process; and
    (d) if more information is required, contact will be made with the applicant to confirm that the review relates solely to a deemed refusal.

2. Based on the information from the applicant, the OIPC will complete a preliminary calculation of the response time, taking into account time extensions and time excluded due to fee-related issues.

3. If satisfied that the sole issue relates to the organization's failure to respond in time, a deemed refusal review file will be opened and the OIPC will contact the organization to:
    (a) confirm that the organization received the request and opened a file;
    (b) confirm timelines and due dates;
    (c) confirm whether or not time extensions were taken;
    (d) confirm that there are no outstanding fee issues;
    (e) record the organization's explanation for the delay;
    (f) identify other appropriate persons e.g., if the delay is due to consultations;
    (g) obtain the organization's estimated time for release;
    (h) determine if the organization is willing to consider a consent order.

4. The OIPC will attempt to mediate a release date, which may include a consent order if both parties have indicated a willingness to seek a consent order.

Consent Orders

1. The organization and the applicant must sign the consent order. Once signed by the parties, the consent order is forwarded to a Director for review and approval if appropriate.

Expedited Inquiry Process

1. If mediation is unsuccessful or if either party is unwilling to seek a consent order, the OIPC may prepare and send out a notice of inquiry. Each party will be allowed to make written submissions in accordance with a schedule set out in the notice of inquiry.

2. The Adjudicator will issue a decision.

Partial or Phased Release

The partial or phased release of records is not the end of a deemed refusal review unless the applicant agrees that it is. The OIPC may monitor a file with a partial or phased release until the remainder of the response is complete.

AUTHORIZATIONS TO DISREGARD ACCESS REQUESTS

Section 37 of PIPA provides that, if an organization asks, the OIPC may authorize the organization to disregard requests for personal information or requests for correction of personal information, that:

(a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests; or

(b) are frivolous or vexatious.

An organization's application to the OIPC for authorization to disregard an individual's request for, or correction of, personal information must be made in writing to the OIPC and the access applicant, and it must include the following information:

- The name of the person making the request(s) the organization is applying to disregard;
- The dates and descriptions of the requests that the organization is applying to disregard;
- An explanation as to how responding to the request(s) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the request and/or an explanation as to how the request(s) is frivolous or vexatious; and
- The proposed remedy the organization is seeking.

The OIPC will review the application and attempt to resolve the matter.

Where the matter is not resolved, the OIPC will issue a notice of inquiry, and the parties will be allowed to make written submissions. The Commissioner or Adjudicator will make the decision and issue an order.

These guidelines are for information purposes only and do not constitute a decision or finding by the Office of the Information and Privacy Commissioner for British Columbia. These guidelines do not affect the powers, duties, or functions of the Information and Privacy Commissioner regarding any complaint, investigation, or other matter under PIPA.