



Office of the Information and Privacy Commissioner for Nova Scotia

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## **Policy, Procedure and Criteria for the OIPC's Authority To Refuse to Conduct a Review or To Discontinue a Review**

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### **Notice to Users**

This document is intended to provide general information and it is not intended nor can it be relied upon as legal advice. The contents of this document do not fetter or bind this office with respect to any matter. The Information and Privacy Commissioner for Nova Scotia will keep an open mind if this office receives a review request (appeal) on the subject matter of this document. As an independent agency mandated to oversee compliance with *FOIPOP* and *Part XX* of the *MGA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot investigate in advance any concerns from an applicant related to an access to information request, so if there are concerns with a public body's or municipality's decision, the applicant must file a review request for this office to investigate the issue and to provide recommendations in response to those appeals. It remains the responsibility of each public body or municipality to ensure that it complies with its responsibilities under the relevant legislation.

## Introduction

In 2025, the Nova Scotia Legislative Assembly passed amendments to The Freedom of Information and Protection of Privacy Act (FOIPOP), Part XX of the Municipal Government Act (MGA) and the Privacy Review Officer Act (PRO). These amendments received royal assent on March 26, 2025. One of the changes to these Acts was to give the Information and Privacy Commissioner (known in the laws as the Review Officer) (Commissioner) the authority to refuse to conduct a review or to discontinue a review.

A decision to not investigate at all or to stop investigating is a serious matter as it could have the effect of removing an applicant's express right to have a review of a public body's decision in relation to an access to information request, a correction to personal information request or a privacy complaint.

## How does this Guide work?

This guide sets out the conditions under which the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) may not investigate a complaint or request for review.

For the purposes of this guide, all references will be to the FOIPOP section numbers only. If you made your access request under the MGA, please adjust accordingly.<sup>1</sup>

For the purposes of this guide, we refer to "public body" to include any and all organisations that are subject to FOIPOP and the MGA.<sup>2</sup>

## What does the law say?

37A The Review Officer may, at any stage of a review, refuse to conduct the review or discontinue the review for whatever reason the Review Officer considers proper or necessary, including if the Review Officer is of the opinion that

- (a) the institution has responded adequately to the matter;
- (b) the matter has been or could be more appropriately dealt with, initially or completely, by means of a procedure other than a complaint or review under this Act;
- (c) there is insufficient evidence to warrant a review;
- (d) the review is trivial, frivolous or vexatious or is made in bad faith;
- (e) the subject-matter of the review is already the object of an ongoing review; or
- (f) the subject-matter of the review has already been addressed by the Review Officer.

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<sup>1</sup> This guide does not apply to the Personal Health Information Act (PHIA). While PHIA also provides authority to disregard, it does not completely align with FOIPOP, MGA and PRO. This guide could assist in understanding how the similar provisions in PHIA would be applied.

<sup>2</sup> Public bodies include government departments, universities, regional centres for education, municipalities and municipal bodies, municipal police, transit authorities, health authorities, agencies, boards and commissions.

## How does the law work?

The Commissioner makes every reasonable effort to investigate, resolve, and settle reviews alleging that a public body has failed to comply with the FOIPOP. However, if the Commissioner determines that it is plain and obvious that a review of the matter would not meaningfully further the protection of privacy, would not make public bodies more accountable, or would not otherwise be in the public interest, the Commissioner may not review an allegation of non-compliance.

This does not mean that the Commissioner will not conduct a review whenever any of these criteria apply. The Commissioner will make a decision on the merits of each case, taking into account all of the relevant circumstances, including the information rights of the complainant.

Upon receiving a request for review, the OIPC reviews the documentation and assesses whether the OIPC has the information needed to proceed. However, if it appears that one or more criteria in this policy apply, a review will not be conducted, and a letter will be sent to the applicant advising them of the reasons for the decision to refuse to conduct a review.

In other cases, during the review, the OIPC may determine that some or all of the issues under review are subject to the OIPC's power to discontinue a review.

If the policy and criteria for discontinuing a review are met, the OIPC can make a decision to discontinue the review. The applicant will be advised by letter of the reasons for the OIPC's decision to discontinue the review.

The review file will be closed and no further action will be taken by the OIPC.

If the applicant is not in agreement with the OIPC's decision to either refuse to conduct a review at all, or to discontinue a review, the applicant may file a request for judicial review with the Supreme Court of Nova Scotia respecting the decision.

## Criteria

The following criteria will be considered by the OIPC when determining whether a review will be completed or conducted.

The public body has responded adequately to the matter.	<ul style="list-style-type: none"><li>• Where it is plain and obvious that the records at issue are subject to an exception or fall outside the scope of FOIPOP.</li><li>• Where the applicant raises no reviewable or arguable issues.</li><li>• Where further investigation or review cannot reasonably be expected to bring about a more satisfactory result.</li><li>• Where the public body has provided a reasonable response and there is no further meaningful remedy available.</li><li>• Where the public body has responded with a fair and reasonable response or remedy.</li></ul>
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	<ul style="list-style-type: none"> <li>• Where the information severed from the records at issue is not the information the applicant requested.</li> </ul>
The matter has been or could be more appropriately dealt with, initially or completely, by means of a procedure other than a complaint or review under FOIPOP.	<ul style="list-style-type: none"> <li>• Where the applicant has failed to attempt to resolve their matter directly with the public body in the manner required by the OIPC.</li> <li>• Where other legislated bodies or other legislation or processes may be more appropriate to deal with the matter; or a matter directly relates to a dispute that is currently or soon to be under investigation by another regulatory or law enforcement body.</li> <li>• Where existing laws or administrative procedures provide a remedy adequate in the circumstances and the applicant has not taken advantage of those procedures and there is no reasonable justification for failure to do so.</li> </ul>
There is insufficient evidence to warrant a review.	<ul style="list-style-type: none"> <li>• Where the applicant has not provided a reasonable basis for believing a contravention has occurred or continues to occur.</li> <li>• Where the matter primarily affects a person other than the applicant and the applicant does not have sufficient interest in the matter, and the review does not raise wider privacy concerns.</li> <li>• Where there are no reasonable grounds to believe that a public body has failed to comply with FOIPOP. For example, the complaint is speculative (e.g. the mere possession of personal information does not mean it was collected unfairly).</li> <li>• Where the issue cannot be determined; such as letters with vague allegations that do not align with the OIPC's jurisdiction from individuals who are misinformed about the OIPC's role, and the OIPC has attempted to clarify with the applicant, to no avail.</li> <li>• Where there may have been a breach of FOIPOP but there is no evidence that the applicant was harmed by the breach.</li> </ul>

	<ul style="list-style-type: none"> <li>• Where the applicant's reason for filing a review is that a record was not provided in response to their access request but the applicant already has a copy of the record from a different source.</li> </ul>
The review is trivial, frivolous or vexatious or is made in bad faith.	<ul style="list-style-type: none"> <li>• 'Trivial' – a review that is small, trifling or of inconsiderable importance. A review may be trivial despite being technically well founded.</li> <li>• 'Vexatious' – the applicant has habitually and persistently made numerous requests for review against the same public body and are identified as intending to annoy, harass, embarrass or cause discomfort to the public body or for some other improper purpose.</li> <li>• 'Frivolous' – a review is widely accepted as lacking legal basis, legal merit, or it is plain and obvious the review cannot succeed.</li> <li>• A request for review is "made in bad faith", if it is made for an improper purpose or is motivated by factors not related to privacy or accountability.</li> <li>• When an applicant intentionally misrepresents events to the OIPC.</li> </ul>
The subject-matter of the review is already the object of an ongoing review.	<ul style="list-style-type: none"> <li>• Where it is plain and obvious the matter(s) under review is currently being reviewed by the OIPC.</li> </ul>
The subject-matter of the review has already been addressed by the OIPC.	<ul style="list-style-type: none"> <li>• Where it is plain and obvious the matter(s) under review has already been decided on by the OIPC.</li> </ul>
<p>The list of reasons found in the act for not completing a review is not exhaustive. The OIPC could decide not to review a matter for whatever reason the Commissioner reasonably considers appropriate, proper or necessary.</p> <p>Some factors the OIPC will consider are:</p> <ul style="list-style-type: none"> <li>• Insufficient reason to continue with the review.</li> <li>• The applicant has not provided required information to the OIPC to conduct or continue a review.</li> <li>• The review has not moved forward because the applicant has failed to respond to the requests of the OIPC.</li> </ul>	<ul style="list-style-type: none"> <li>• Where continuing the review will not serve to protect the privacy of any individual or meaningfully advance privacy in general.</li> <li>• Where continuing the review will not meaningfully advance accountability or serve to hold a public body accountable.</li> <li>• Where there is no meaningful remedy for the remaining issues, or the remedy sought by the applicant is not meaningful or cannot be achieved.</li> <li>• Where a third-party files a review and there is no reasonable possibility of success in establishing that all three parts of the three-part test can be satisfied.</li> </ul>

	<ul style="list-style-type: none"> <li>• Where there are opposing views on the matter in dispute with no conclusive evidence to support either side.</li> <li>• Where the remedy or outcome expected, or sought by the applicant, is not meaningful or cannot be achieved.</li> <li>• Where the applicant has failed to provide the OIPC with current contact information.</li> <li>• Where the applicant claims to be representing another individual but has failed to provide the OIPC with valid consent or proof of representation.</li> <li>• Where the applicant has failed to respond to the OIPC after a reasonable number of attempts to contact them.</li> <li>• Where the applicant has failed to provide the OIPC with the name of the public body subject to the review and the name of the individual with whom they interacted. Providing the means to find the information (e.g. website URL) or to trace the identity of the party complained about is not sufficient.</li> <li>• Where the applicant provided false or misleading information.</li> </ul>
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## Acknowledgements

Special thanks to all of our Canadian counterparts who have had these provisions in their laws and who have produced guides and decisions that helped us to make this guide and will assist in our decision making for these new powers.

## Disclaimer

This guide may be updated as new cases become available. The Commissioner reserves the right to rely on additional cases and resources in the decision-making process, not only those listed above.

## Questions?

This guidance was prepared by the Office of the Information and Privacy Commissioner for Nova Scotia. Whether you are an applicant, a public body or a municipality, we encourage you to contact us if you have any questions about the access to information process in Nova Scotia.

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