



## Know Your Rights Glossary: Review Request Terms

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Under Nova Scotia's access to information laws, anyone can make an access to information request. This guide is part of our series entitled, "Know Your Rights" and is intended to help citizens understand what their rights are.

This document discusses two of Nova Scotia's access to information laws. The *Freedom of Information and Protection of Privacy Act* (FOIPOP) applies to government departments, agencies, universities and regional centres for education (formerly called school boards). *Part XX of the Municipal Government Act* (MGA) applies to organizations such as municipalities, towns, villages and municipal police forces. Both laws give applicants the right to request a review of public body decisions. This glossary helps to explain the terms we use at the Office of the Information and Privacy Commissioner (OIPC) when we investigate your review request.

The following describes several terms that appear frequently during the review process. This glossary attempts to break down some of that jargon into clear language. However, it is intended solely as a guide, and though it strives to be as accurate as possible, you should look to the actual legislation and review reports for definitive interpretations.

If there is a **bolded** word within the glossary entry, that term has its own glossary entry.

**Act** – This is a short way of saying the *Freedom of Information and Protection of Privacy Act* and/or *Part XX* of the *Municipal Government Act*. We use this term to mean both **FOIPOP** and the **MGA** and their **Regulations** in instances where the laws are similar; FOIPOP and the MGA are referred to individually where the laws are different.

**Access request** – A formal, written document, that describes the government **record(s)** that the **applicant** wants to receive. It is usually done on a **Form 1**, but it can be in a letter, so long as the letter identifies that the request is made under the **Act**. Formally it is called an “Application for Access to a Record.”

**Appeal** – See **review request**.

**Applicant** – The person who makes an **access request** to a **public body** and also the person who applies for correction of personal information by the public body.

**Appropriate person** – A person to whom the **OIPC** gives notice under section 37(2)(d) of **FOIPOP** or section 490(2)(d) of the **MGA** because they have an interest in the **review** or have information that the **Commissioner** deems relevant to the review.

**Backlog** – The **OIPC** receives **review requests** faster than we can complete them. This results in review request files waiting in a queue for assignment to an OIPC investigator.

**Burden of proof** – The obligation of one of the **parties** in the **review** to persuade the **Commissioner** to decide an issue in their favour.

**Commissioner** – Short for **Information and Privacy Commissioner**.

**Decision** – The **head** of the **public body** must respond to an **access request** by issuing a decision. This duty is often **delegated** to someone else, often referred to as the **FOIPOP Administrator**. Usually, during the review process, “decision” will describe both the public body’s letter to the **applicant** and the record **disclosure** package.

**Deemed refusal** – A **public body** has 30 days to respond to an **applicant’s access request**, or it must take steps to extend the deadline. If it fails to do either, this is considered to be a decision to refuse access to the information, or a “deemed refusal.”

**Delegate** – The formal process when the **head** of a **public body** authorizes an employee or officer within the public body to perform certain duties or to exercise certain powers or functions of the head under the **Act**.

**Disclosure** – The information in the **records** that is made available to the **applicant** in response to an **access request**.

**Discretionary** – Discretion is the power to make a **decision** that cannot be determined to be right or wrong in an objective sense. Discretion amounts to the power of the decision-maker to choose a particular course of action for good reasons and in good faith after considering the relevant facts and circumstances, the applicable sections of the **Act**, and the proper application of the law to the relevant facts and circumstances.

**Duty to assist** – The **Act** requires that the **public body** make every **reasonable** effort to assist an **applicant** and to provide them with a timely decision that is “open, accurate and complete.” The phrase “duty to assist” covers all the actions a public body is expected to take in responding to an applicant’s **access request**. The parts of the duty to assist were discussed in detail in the OIPC’s [2011 Annual Report](#).

**Exception** – Also known as an exclusion. A provision of the **Act** that establishes that certain types of information are outside the application of the law. The list of exceptions can be found in section 4(2) of **FOIPOP** and section 463(2) of the **MGA**.

**Exemption** – While the **Act** states that its purpose is to ensure **public body** information is accessible, it also recognizes that there are circumstances where information cannot or should not be made public. The reasons why a public body might choose or be required to **sever** information can be found in sections 12 through 21 of **FOIPOP** and sections 472 through 481 of the **MGA**. The Act also states that those reasons should be used in “limited and specific” circumstances. Other jurisdictions will sometimes refer to these reasons as “exceptions.”

**Fee estimate** – **Public bodies** are allowed to charge fees for access to information that is not about the **applicant**. These fees must be based on specific costs for work actually performed (those costs are defined in the **Regulations**). Before proceeding with the work and billing, public bodies first have to give applicants a reasonably accurate and detailed breakdown of what the work will actually be and how much it will cost. Applicants have the right to appeal the public body’s fee estimate to the **Commissioner**. The public body will not release its **decision** until after either the fees are paid, or the **OIPC** completes its **review** of the fee estimate. Please see our [Duty to Assist #4: How to Calculate Fees](#) guide for more details about what work a public body can charge fees for.

**Fee waiver** – **Applicants** can make a request to a **public body** to not be charged the fees associated with processing the **access request** (not application fees, those are mandatory). The **burden of proof** rests with the applicant to establish that the fees should be waived.

**Findings** – At the conclusion of every **formal review**, the **Commissioner** will state the facts of the matter. These findings will clarify the issues that the **recommendations** will seek to resolve.

**FOIPOP** – Acronym for *Freedom of Information and Protection of Privacy Act*. It applies to provincial departments; provincial agencies, boards and commissions; health authorities; universities & colleges; and regional centres for education. We also use this acronym to describe *Part XX* of the *Municipal Government Act* and similar access to information legislation across the country.

**FOIPOP Administrator** – The **head** of the **public body** can name an employee to make (**delegate**) decisions for them. In most large public bodies, this will be a dedicated employee. That person will be the primary contact for **applicants** with questions about access or privacy, will typically make and sign off on the public body’s **decision** to the applicant, and will represent the public body during the **review**. The provincial government calls them **IAP Administrator**.

**Form 1** – The form provided by **Regulation** for making an access request. It is sent to the **public body** and identifies the **record** (information) the **applicant** is requesting.

**Form 7** – The form provided by **Regulation** for making a review request. It is sent to the **Commissioner** and identifies the concerns with the **decision** that the **applicant** wants the **OIPC** to **investigate**.

**Formal review** – If a **review request** is not closed by an **informal resolution**, it is forwarded to the **Commissioner** to complete the review. The Commissioner will consider the **records** and the **representations** provided by all the **parties** and will conduct research on the issue(s). Once she has considered this information, the Commissioner will make her decision in the form of a **Review Report**.

**Harm** – Damage or detriment. Within the context of the **Act’s exemptions** to disclosure, “harm” is the term used to refer to the injury to a particular public or private interest that could occur as the result of releasing certain types of information in the **responsive record**. The harm must be specific to the context of the **access request**. The general test for harm under the Act is whether there is a **reasonable** expectation of harm flowing from **disclosure** of the specific information at issue.

**Harm(s) Test** – A test or set of criteria used to determine whether **disclosure** of records or information would cause damage or detriment to a particular interest. To meet the **burden of proof**, the **public body** must provide evidence that:

- there is a reasonable expectation of probable harm (well beyond a mere possibility of harm but somewhat lower than harm that is more likely than not to occur);
- the harm constitutes damage or detriment, not mere interference or inconvenience; and
- there is a connection between disclosure and the anticipated harm.

**Head** – The person in charge of the **public body**, who is ultimately responsible for administering the **Act**. In most cases, the head will be the minister of a government department, the chair of a board or commission, the chief administrative officer or clerk of a municipality, or as designated by a regulation. The head typically **delegates** those day-to-day functions to a **FOIPOP Administrator**.

**IAP Administrator** (stands for “information access and privacy”) – What the provincial government calls its **FOIPOP Administrators**. They act as advisors to the department in the decision-making process and represent the department during the **review**.

**IAP Services** (stands for “information access and privacy”) – This is the provincial government’s internal access and privacy office; it is part of a **public body**. The **IAP Administrators** are responsible for processing the **access requests** submitted to their client government departments. IAP Services is separate and distinct from the **OIPC**; the OIPC has **oversight** over the **decisions** made by IAP Administrators on behalf of their client government department.

**In-camera** – Means in private. The **Commissioner** may give permission for a **party** to submit **representations** in private if they can show that the damage that results from publishing or sharing their representations would be worse than the good that is achieved by the usual means of making the arguments public. For example, if a **public body** needed to describe the information that it wishes to **sever** in order to prove that the **exemption** fits, then it might defeat the purpose of the exemption by sharing that same information.

**Informal resolution** – Is a result or outcome of the **review**. If the **Commissioner** has already written a **Review Report** on an issue, **OIPC** staff will bring those results to the attention of either the **applicant** or the **public body**. Because she is generally bound by precedence, the Commissioner will most likely come to the same decision each time she is asked to make **recommendations** on an identical issue.

**Information and Privacy Commissioner** – The **head** of the **OIPC**. The Commissioner is the only person who can issue **findings** and **recommendations** in response to review requests. Formerly known as the “**Review Officer**” which is the title used in the **Act**.

**Intake** – The first part of the **review** process. Files are opened, reviewed for jurisdiction, and the relevant documents, including all **records** an **applicant** has requested, are collected. Sometimes, an **informal resolution** will be attempted.

**Investigate** – The **Act** uses the phrase “conduct a review”. It refers to the procedures used by the **Commissioner** and **OIPC** staff to determine the **public body**’s compliance with the **Act**. After investigating, OIPC staff will provide the parties with an **opinion** on the public body’s compliance. This may result in an **informal resolution**. If not, the Commissioner will complete the investigation and will issue a **Review Report**.

**Mediation** – A formalized option available to bring about an **informal resolution** to a **review request**. It requires **applicants** and **public bodies** to work together to come up with creative solutions to the issue. The **OIPC** will only attempt to mediate a file if (1) the issues are suitable for mediation and (2) all parties agree to enter into mediation. The OIPC makes the decision if mediation will be attempted. The mediation process is kept confidential and the outcome is not considered **precedence**.

**MGA** – Acronym for *Part XX* of the *Municipal Government Act*. It applies to regional municipalities, towns, county or district municipalities, villages, service commissions and municipal bodies, including municipal police services and libraries.

**Notice of formal review** (NFR for short) – A notice issued to the **parties** by the **OIPC** that the file is moving to the **Commissioner** to complete the **formal review**. It acts as an invitation to the **parties** to provide written **representations** in support of their positions.

**OIPC** – Short for Office of the Information and Privacy Commissioner.

**Opinion** – During the course of the **investigation**, **OIPC** staff will bring together the facts and relevant considerations, research similar situations in Nova Scotia and other jurisdictions, and clarify how the law applies to the situation at hand. After a thorough analysis of the evidence and issues, they will develop an opinion on the **public body's** compliance with the **Act**. This will be shared with the **parties**, via phone or email, and if necessary, in a more formal detailed letter. This opinion can help the parties review their positions and decide if an **informal resolution** is possible. If an informal resolution is not achieved, the opinion is designed to help all parties understand their position and to help them in drafting their final **representations** before the **Commissioner** completes the **formal review**.

**Oversight** – The responsibility and power to **investigate** and assess a **public body's** compliance with the **Act**.

**Party** – Someone with an actual interest in the **review**, and therefore the right to make **representations**. In most cases, this will be the **applicant** and the **public body** or the applicant, a **third party** and the public body. Rarely does the **Commissioner** determine that more people can be party to a review, but she does have the authority to do so.

**Precedence** – In writing **Review Reports**, the **Commissioner** will consider access to information decisions on similar matters made by the Courts, the **OIPC**, and other access to information commissioners. If similar information and exemptions have already been considered, then the Commissioner can come to decisions that are more fair, more transparent, and more consistent than if each case was decided in isolation. Review Report [FI-09-40](#) provides a more detailed explanation of the Commissioner's view of precedence.

**Public body** – The term given by the **Act** to government departments and most organizations that are funded primarily by government. Effectively, this is the organization to which an **applicant** applies for **records**. Under the **MGA**, “municipalities” and “municipal bodies” are given the same responsibilities as “public bodies” under **FOIPOP**. **OIPC** staff will typically use “public body” when speaking in generalities to mean any organization covered by FOIPOP and the MGA.

**Reasonable** – Not excessive or extreme but feasible, practical and fair.

**Recommendations** – When a **Review Report** is issued, in addition to the **findings**, the **Commissioner** will make whatever recommendation(s) considered appropriate to solve the issues identified in the findings. It is up to the public body to determine whether or not it will accept the recommendations.

**Record** – The thing that holds the information an **applicant** is looking for. While the principles of the **Act** focus on ensuring access to information, the nuts and bolts of the process actually center on access to records: in other words, the information has to be recorded or stored in a retrievable format before it can be requested using the **Act**.

**Redact** – See **sever**.

**Regulations** – Provide more detailed rules on the how to practically apply the **Act**.

**Representations** (also known as submissions) – A communication with the **OIPC** by a **party** to the **review** that describes the party’s position, arguments, evidence and interpretations in relation to the issue(s) under **investigation**. This can include letters, e-mails and phone calls among other means of communication. Any explanation that a party provides will be treated as a representation and may be quoted in a **Review Report** unless the **Commissioner** has agreed to accept the representation **in-camera** in advance. The Commissioner considers all representations when preparing the **Review Report**.

**Responsible Officer** – The **head** of an organization subject to the **MGA**.

**Responsive record** – The **record**, or records, that was located by the **public body** in response to an **access request**.

**Review Officer** – This was the title formerly used by the **Information and Privacy Commissioner** and that is used in the **Act**.

**Review** – A short way to refer to the **review request** process.

**Review Report** – This is the formal document, which is normally made public, written by the **Commissioner** at the conclusion of the **formal review**. It includes background, **findings** and **recommendations**.

**Review request** – A formal, written document that identifies the concerns with the **decision** made by a **public body** that the **applicant** wants the **Commissioner** to **investigate**. It is usually done on a **Form 7**, but it can be in a letter, so long as the letter has the necessary information to proceed, such as the details of the **access request** (wording and date), the name of the public body that the access request was submitted to, the decision that was made by the public body, and the part(s) of the decision that the applicant wants investigated. Formally, it is called a **Request for Review** and often called **appeal**.

**Sever** – The most commonly used term for a **public body**'s act of removing information from a **responsive record**. Usually it is done by whiting out and leaving a blank space in the **disclosure** to the **applicant**. Sometimes it is done with a black marker. Severances are expected to be marked with the section of the **Act** that says the information can be withheld. Sever means the same things as “**redact**” or “**withhold**”.

**Third party** – Any person or group of people who is not the **applicant** or the **public body**. Where a third party's personal or business information is part of a **responsive record**, the public body is usually required to tell the third party about the **access request**. The third party is also given the opportunity to file a **review request** if they disagree with public body's **decision**.

**Withhold** – See **sever**.

## QUESTIONS?

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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, or a third party, we encourage you to contact us if you have any questions about the access to information process in Nova Scotia.

**Phone: 902-424-4684**  
**Toll Free (NS): 1-866-243-1564**  
**TDD/TTY: 1-800-855-0511**  
**Fax: 902-424-8303**  
**Email: [oipcns@novascotia.ca](mailto:oipcns@novascotia.ca)**