



Office of the Information and Privacy Commissioner for Nova Scotia

How to Appeal a Decision to the OIPC (Request a Review)

Access to Information Appeals

The following table explains your appeal rights under the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, the *Municipal Government Act (MGA)* and the *Personal Health Information Act (PHIA)*.

You can appeal decisions of health custodians, public bodies and municipalities in relation to access to information requests. There is no fee for appealing to the OIPC but there are timelines and other rules that you must follow.

| Who | What to do | Hints |
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| Applicants under <i>FOIPOP</i> and <i>MGA</i> | <p>Contact the OIPC within 60 days of receiving a public body's or municipality's decision.</p> <p>Grounds for review (appeal): You can request a review of any decision, act or failure to act in relation to an access to information request including:</p> <ul style="list-style-type: none">• The public body or municipality did not complete an adequate search and did not produce all the records requested.• The public body or municipality did not make the right decision about giving out the information in the records.• The public body or municipality failed to respond within 30 days.• The public body or municipality charged too high a fee or should have waived the fee.• The public body or municipality refused a correction request. | <ul style="list-style-type: none">✓ Make your appeal request to the OIPC in writing✓ Form 7 is available to make it easier✓ Attach your original request and the public body or municipality's decision |

| Who | What to do | Hints |
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| Applicants under <i>PHIA</i> | <p>Contact the OIPC within 60 days of receiving a health custodian’s decision.</p> <p>Grounds for review (appeal): You can request a review if:</p> <ul style="list-style-type: none"> • You believe the custodian has contravened <i>PHIA</i> or the Regulations • The custodian has refused to give you access to a record of your personal health information • The custodian has refused to make a correction to a record of your personal health information • The custodian has not responded to your access to information request within 30 days. | <ul style="list-style-type: none"> ✓ Make your appeal request to the OIPC in writing ✓ Request for Review Form for Access/Correction is available to make it easier ✓ Attach your original request and the health custodian’s response |
| Third Party under <i>FOIPOP</i> or <i>MGA</i> | <p>Contact the OIPC within 20 days of receiving notice of disclosure from the public body or municipality.</p> <p>Grounds for review (appeal): The public body or municipality did not make the right decision about disclosing your business’s information in a record going to an applicant.</p> | <ul style="list-style-type: none"> ✓ Make your appeal request to the OIPC in writing ✓ Form 8 is available to make it easier ✓ Attach the public body or municipality’s notice and decision |

Privacy Complaints (appeals)

The following table explains your privacy complaint rights under the *Privacy Review Officer Act* (for *FOIPOP*) and the *Personal Health Information Act (PHIA)*. There is no fee for filing a privacy complaint. However, the law requires that you make your privacy complaint to the public body or health custodian first before filing an appeal (privacy complaint) with the OIPC. The OIPC does not have jurisdiction to hear privacy complaints involving municipalities or municipal police.

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| <p>Complainant under <i>PRO</i> (for <i>FOIPOP</i>)</p> | <p>Contact the OIPC within 60 days of receiving the public body’s response to your complaint.</p> <p>Grounds for complaint include:</p> <ul style="list-style-type: none"> • The public body improperly collected, used or disclosed my personal information. • The public body failed to adequately secure my personal information. | <ul style="list-style-type: none"> ✓ You must first complain to the public body. ✓ If you are not satisfied with the public body’s response to your complaint or if it does not respond within 60 days, make your complaint (appeal request) to the OIPC in writing. ✓ Attach your original complaint letter and the public body’s response. |
| <p>Complainant under <i>PHIA</i></p> | <p>Contact the OIPC within 60 days of receiving the health custodian’s response to your complaint.</p> <p>Grounds for complaint include:</p> <ul style="list-style-type: none"> • You believe the custodian has contravened <i>PHIA</i>. • The custodian has failed to respond to your privacy complaint in the time required by the custodian’s complaint policy (up to a maximum of 60 days). | <ul style="list-style-type: none"> ✓ You must first complain to the custodian. ✓ If you are not satisfied with the custodian’s response to your complaint or if it does not respond within 60 days, make your complaint (appeal request) to the OIPC in writing. ✓ Attach your original complaint letter and the health custodian’s response. |

- ✓ An **applicant** is the person requesting information from a public body, municipality or health custodian.
- ✓ A **third party** is a person or organization who is referred to in a record or who may have an interest in records being considered for disclosure.
- ✓ A **complainant** is a person who files a complaint about a public body or health custodian in relation to the handling of his or her personal information.

Do I need a lawyer to request access to information or appeal to the OIPC?

No. You do not need a lawyer but you can use one if you like. You will have the same rights and follow the same process if you act on your own as you do if you use a lawyer.

Is there another option to appeal the public body decision?

An applicant under *FOIPOP* or the *MGA* can appeal to the Nova Scotia Supreme Court:

- ✓ Within 30 days of notification of the public body’s decision (instead of appeal to the OIPC), if there are no third parties involved
- ✓ Within 30 days of notification of the public body’s decision after the OIPC issues a report
- ✓ Within 30 days of the public body’s act or failure to act
- ✓ An appeal to the Nova Scotia Supreme Court must follow all [Civil Procedure Rules](#)

There are fees to file an appeal with the Supreme Court and many people choose to be represented in court by a lawyer. Legal fees vary by the lawyer and complexity of the case. For information on court processes and fees, contact the Nova Scotia Supreme Court: www.courts.ns.ca.

What will happen if I appeal to the OIPC?

An appeal (or complaint) to the OIPC means that you ask for a decision, act or failure to act to be investigated. If necessary, the OIPC may issue a report with recommendations to the public body, municipality or health custodian

There are three main stages of an appeal to the OIPC:

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| Intake | The OIPC staff will: <ul style="list-style-type: none">✓ Open a file with a tracking number✓ Send you a letter acknowledging your appeal or complaint✓ Give a copy of your appeal or complaint to the public body, municipality or health custodian✓ Contact the public body, municipality or health custodian for details and to obtain a copy of the records in question (if any)✓ Work with the parties to identify potential early resolution options |
| Investigation/Informal Resolution | The OIPC staff will: <ul style="list-style-type: none">✓ Investigate the circumstances✓ Work with all parties to explore resolution possibilities✓ Clarify the law and how it applies to the situation✓ Bring together all the facts and considerations✓ May conduct a confidential formal mediation when requested by the parties✓ Research similar situations in Nova Scotia and other jurisdictions✓ Prepare an opinion letter setting out the law for the parties to consider |

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| Formal Review | <p>If informal resolution is not successful, the Commissioner will:</p> <ul style="list-style-type: none"> ✓ Bring a fresh set of eyes to the situation ✓ Ask all parties to make submissions in writing ✓ Review the entire file (except for documents produced and discussions that took place during any formal mediation process) ✓ Decide whether the public body, municipality or health custodian was correct, partially correct, or incorrect ✓ Make recommendations to the public body or municipality on what to do, normally in a public report ✓ Make recommendations to a health custodian on what to do in a private report to the parties. The Commissioner may send a de-identified copy of the report to any person the Commissioner considers appropriate |
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What is an OIPC report and what difference will it make?

An OIPC report (Review Report) is a document that describes the facts, what the Information and Privacy Commissioner thinks about how the law applies to the facts, and sets out **non-binding recommendations**. You can read previous public reports at <https://oipc.novascotia.ca/publicly-issued-reports>

Sometimes public bodies, municipalities or health custodians accept and implement all or part of the Commissioner’s recommendations. If you are not satisfied with the response to the Commissioner’s recommendations, you can appeal to the Nova Scotia Supreme Court. You cannot appeal the Commissioner’s recommendations to the Nova Scotia Supreme Court.

If you bring a privacy complaint to the OIPC and the matter does not resolve informally, the formal report may be issued privately to protect your identity. Recommendations to a public body or health custodian may include changes to the way it collects, uses, discloses or secures personal information. If your complaint raises issues affecting the privacy rights of a significant number of people, the OIPC may issue a public report describing the public body's or health custodian’s responsibilities and its recommendations. The OIPC will investigate the circumstances and if the findings do not support your complaint, the OIPC will let you know.

Notice

These guidelines are for information only and do not constitute a decision or finding by the Information and Privacy Commissioner for Nova Scotia with respect to any matter within her jurisdiction. These guidelines do not affect the powers, duties or functions of the Commissioner regarding any complaint, investigation or other matter under or connected with the Commissioner’s jurisdiction, respecting which the Commissioner will keep an open mind.