



Guide to Review Process

where information has been withheld in part or in full under an exemption

Freedom of Information and Protection of Privacy Act (FOIPOP)

Municipal Government Act (MGA)

Personal Health Information Act (PHIA)

Office of the Information and Privacy Commissioner for Nova Scotia (OIPC)
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Introduction

This document sets out the Office of the Information and Privacy Commissioner's (OIPC) procedure for requests for review made under section 32 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, section 487 of the *Municipal Government Act (MGA)* and section 91 of the *Personal Health Information Act (PHIA)*.

This procedure applies **only** to access to information reviews where information has been withheld in part or in full under an exemption. This procedure **does not** apply to time extensions, deemed refusals, fees, transfers, search or privacy complaint reviews.

The review is one formal process with four stages: (1) intake (2) investigation (3) public review report and (4) post review report.

For the purpose of this document, the use of "public body" includes public bodies, municipalities and health custodians.

Definitions for the terms used in this document are provided in the OIPC's [Glossary: Review Request Terms](#).

Disclaimer

This document outlines the OIPC's general approach to a review. The issues and circumstances of the matter will dictate what is appropriate. The OIPC has discretion to deviate from the steps outlined in this document where appropriate, fair and just to do so. A deviation from the steps does not, for that sole reason, mean that the review is invalid.

There are multiple outcomes possible at each stage of the review process. These outcomes include the review being screened out by the OIPC, abandoned by the applicant, withdrawn by the applicant, informally resolved by the parties or closed by way of a public review report issued by the Commissioner.

Procedure for reviews where information has been withheld in part or in full under an exemption

Stage 1 – Intake

1. The OIPC receives a request for review from an applicant.¹
2. A triage occurs at this stage to identify the issues and determine if the OIPC has jurisdiction to hear the matter.
3. In all cases, the OIPC will acknowledge receipt of the applicant's request for review and will notify the relevant public body. Both parties will receive a Notice of Review. This will be the indication that the OIPC will undertake a review of the public body's decision. If the matter is screened out, the acknowledgement will also serve as notice of closure.
4. The Notice of Review to the public body will include a request for the following:
 - a. A copy of the public body's decision, including a copy of the responsive records, in the same unaltered form as was provided to the applicant. If page numbers were not already provided on the records, they should be added and if applicable, the exemption(s) applied should be clearly noted on the pages where redactions were made.
 - b. A clean copy of the public body's decision with no redactions and the record numbers or page numbers that match the applicant's version (item #4a), with the redaction(s) or severance(s) highlighted and the exemption(s) clearly noted on the page.
 - c. All communications to/from the applicant and the public body related to the access to information request.
 - d. All communications to/from any affected third parties and the public body related to the access to information request.
 - e. All communications regarding applicant's application for access to records.
 - f. Any other relevant information that the OIPC considers necessary for a full review.
5. Where an email address is available, the Notice of Review will be sent electronically.
6. The Notice of Review will indicate that all the items requested are to be provided within 15 days after receipt of the Notice of Review. The items can be provided to the OIPC either in electronic or paper form.

¹Note that an applicant may include a third party initiating a review.

7. Any late discretionary exemptions and substitution of exemptions will only be accepted at this stage of the review. If this happens, the public body must issue an amended decision to the applicant and provide a copy to the OIPC. The amended decision must include a copy of any record affected by the amended decision. This must happen within the 15-day response time.

Stage 2 – Investigation

8. Once the file is assigned to an investigator, the OIPC will conduct a thorough review of the information and records received from the parties.
9. The OIPC will prepare a Notice of Investigation. Notices will be sent to both the applicant and the public body.² The Notice of Investigation will include the following:
 - a. Confirmation of the issues, including any new issues identified by the OIPC.
 - b. A request for any other relevant information/records that the OIPC considers necessary for a full review if that information was not apparent before having the records in hand.
 - c. Indication of whether a third party will be included as a party.³
 - d. A request for the parties to submit written representations.
10. The Notice of Investigation will indicate that representations are to be provided within 21 days or any further time directed by the OIPC.
11. A party's written representations are the party's only opportunity to set out their position and provide evidence. There are two exceptions to this:
 - a. The OIPC may seek additional information following its review of a party's representations during Stage 2.
 - b. The Commissioner may seek additional information following her review of the entire file at Stage 3.
12. Unsolicited supplementary or additional representations received outside of the above-noted process will only be considered by the OIPC in exceptional circumstances.

²In some cases, it may be necessary to send the Notice of Investigation separately to each party because if the Notice requests additional information from the public body, it may include details that disclose the very information the public body has withheld from the applicant. As such, a Notice of Investigation that discloses this type of information would be sent separately to the public body.

³Third parties could be those who were given notice of the application for access to a record and are automatically entitled to participate in the review, the person who made the access request in the case of a third party review or any other person the Commissioner (Review Officer) considers appropriate.

13. The representations should include the following for each instance an exemption is applied and/or issue under review:
 - a. Reference to the exemption(s) applied by section, subsection, clause and subclause.
 - b. List of the record numbers or page numbers (group pages if the records are similar).
 - c. Reference to the applicable test(s) set out in previous OIPC review reports for the exemptions applied. These can be found on the OIPC website: <https://oipc.novascotia.ca/reports>.
 - d. Reasons or justifications for the position taken by the party regarding the issue(s) under review.
 - i. Parties should consider referring to previous review reports from Nova Scotia and other jurisdictions, as well relevant court cases.
 - e. Any further materials necessary to support the party's position (such as affidavits, court cases, review reports, published research, contracts and publicly available information).
14. The representations are likely to be summarized and quoted in any public review report. A summary of the parties' positions may be included in the investigator's opinion letter, which is provided to all parties.
15. Parties intending to include information in their representations that cannot be shared with any other parties and the public may make a request outlining the rationale for requesting an in camera submission within one week of receiving the Notice of Investigation. If, following that request, the party is granted permission by the Commissioner to submit all or part of their representations in private, that party will be provided with additional guidance on how best to organize and submit them.
 - a. The Commissioner will decide whether or not to grant permission to submit in camera representations within 3 business days.
 - b. Parties must ensure that they leave enough time for these steps to ensure the 21-day deadline is met (item #10).
 - c. In camera representations should only be used in rare situations where there is a real risk that information that must remain confidential will be disclosed while explaining the party's decision and evidence.

16. The OIPC will analyze the records, each party's representations and any other materials provided by the parties. The OIPC investigator may conduct independent research on the matter. If any information requested in the Notice of Investigation is missing or clarification is needed, the OIPC will request that information from the applicant, public body or third party and then continue with its analysis. If information is not provided by the date given, the OIPC will proceed with its analysis.
 - a. Any additional information collected by the investigator at this point will form part of the file for the Commissioner's review if the matter proceeds to the public review report stage.
17. Following receipt of representations and completion of the file analysis, the OIPC investigator will issue a letter that sets out their opinion on what steps each party should take to resolve the file informally without the need to proceed to Step 3 – Public Review Report.
 - a. The opinion letter will be issued within 14 days of the representations due date.
18. The parties will have 14 days to consider the OIPC investigator's opinion and decide whether they will accept the opinion and take the suggested actions or not.
19. If the parties accept the opinion, the matter will informally resolve. This means the file will be closed once the actions set out in the opinion letter are complete. A public report will not be issued.
 - a. The actions must be completed within 7 days, unless the OIPC investigator determines more time is required. If the actions are not completed within the assigned timeframe, the matter will proceed to Stage 3 – Public Review Report.
 - b. Parties may agree to resolve some matters and not others. If some matters are informally resolved, they will not form an issue under review at Stage 3 – Public Review Report.⁴ The remaining matters will proceed.
 - c. If all issues are informally resolved, the file will be closed and the parties will be notified in writing.
20. If any party rejects the opinion, the matter will move to Stage 3 – Public Review Report.
21. Parties will be notified that the matter will move to Stage 3 by way of a Notice of Public Review Report.
 - a. All outstanding issues will be listed in the Notice of Public Review Report and will proceed to Stage 3 – Public Review Report.

⁴Note that the complete history of the file is likely to be summarized in the background of the public review report.

Stage 3 – Public Review Report

22. The Commissioner will review the complete file and all materials compiled to date. Information contained within the file will likely be referred to and/or quoted in the public review report (unless in camera submissions were approved).
23. Unless the Commissioner formally asks for further representations or answers to questions, there will be no additional opportunity for the parties to submit representations.
24. If the Commissioner raises a new issue, or significantly changes an issue listed in the Notice of Public Review Report, parties will be given 14 days to provide representations on those items only.
25. The Commissioner will prepare and issue the public review report, which will include her reasoning, findings and recommendations.
26. The public review report will be shared with the parties two business days in advance of being publicly posted on the OIPC website.⁵ A copy of the public report is sent to the [Canadian Legal Information Institute](#) (CanLii) for publication, forwarded to other information and privacy commissioners/ombudsman and distributed on the OIPC's Listserv (email distribution list).

Stage 4 – Post Review Report

27. When a public review report is issued, pursuant to the applicable legislation, the public body must, within 30 days, respond to the applicant and the OIPC providing its decision of whether or not to follow the Commissioner's recommendation(s) set out in the public review report.
28. A summary of the public body's response to the recommendation(s) will be posted to the OIPC's website.
29. Within 30 days of receipt of the public body's decision in response to the Commissioner's recommendation(s), the applicant may appeal the decision to the Supreme Court of Nova Scotia:
 - a. Rule 7.20(4) of the *Rules of Civil Procedure* require that notice of an appeal be given to the OIPC.
 - b. The OIPC is not a party to the appeal.

⁵ Reports are posted publicly after two business days, however the OIPC may change the timing of publishing the review report when it deems it appropriate to do so. All parties will be notified in advance of the publication date.

30. The OIPC will destroy the records it received to conduct the review within 4 months after the public review report was issued or the file was informally resolved unless:
- a. The matter has proceeded to the Supreme Court of Nova Scotia, in which case the OIPC shall not destroy the records until the court process is complete.
 - b. The OIPC determines that there are unique circumstances that justify the records being retained (such as the same records relate to another review that is not yet complete).
 - c. The public body has requested that the OIPC return the records (at their expense).

Participation

31. Since they are the party that initiated the review, if an applicant is unreachable or unresponsive during the process, the review will not proceed. The file will be considered abandoned and the file will be closed. An applicant may choose to withdraw their review request at any time and the file will be closed.
32. If a public body or a third party is unreachable or unresponsive during the process, the review will proceed without the benefit of their participation.

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