



Personal Information Protection Act

GUIDE TO OIPC PROCESSES

January 2004

Overview

The Information and Privacy Commissioner for British Columbia is generally responsible for monitoring how the *Personal Information Protection Act* is administered to ensure that its purposes are achieved. The Commissioner's mandate also includes specific authority over:

- extensions of time for organizations to respond to requests for access to personal information
- complaints against organizations
- reviews of decisions made by organizations
- inquiries relating to complaints and reviews
- authorizations to organizations to disregard requests for access to or correction of personal information.

Achieving direct communication between parties and the resolution of disputes by agreement is a central objective of the Commissioner. This objective will generally be given initial and ongoing priority for all matters falling within the Commissioner's authority under the Act.

1.0 Interpretation

1.1 The meaning of some of the terms used in this guide are explained below:

“access request” is an individual’s request to an organization for access to the individual’s personal information under the control of the organization;

“Act” is the *Personal Information Protection Act*;

“contact information” is 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 holiday or a Sunday;

“employee personal information” is 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;

“OIPC” is the office of the Information and Privacy Commissioner for British Columbia, including the Commissioner and the Commissioner’s delegates, staff or other representatives;

“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” is information about an identifiable individual and includes employee personal information, but does not include contact information or work product information;

“work product information” is 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 personal information about an individual who did not prepare or collect the personal information.

2.0 Communicating With The OIPC

2.1 The OIPC can be contacted by mail, telephone or fax at:

Office of the Information and Privacy Commissioner
PO Box 9038, Stn Prov Govt
Victoria, British Columbia V8W 9A4

Telephone: (250) 387-5629
Facsimile: (250) 387-1696

2.2 The OIPC accepts only material printed on paper that is delivered, or transmitted by fax, to the OIPC. The OIPC does not accept material by e-mail.

2.3 The OIPC will try to accommodate the needs of individuals who have limited ability to read and write or a disability that impairs their ability to communicate in writing.

3.0 Extending Time To Respond To An Access Request (Section 31)

3.1 An organization may extend the time to respond to an access request 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 under the *Freedom of Information and Protection of Privacy Act*, before the organization is able to decide whether or not to give the access to the requested document.

3.2 An organization may not take more than 60 days to respond to an access request 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:

- (a) the reasons for asking for a time extension,
- (b) any organization file number for the access request;
- (c) a brief description of the personal information requested,
- (d) the date the organization received the access request,

- (e) the date the organization sent a fee estimate and the date fees or a fee deposit was paid, if applicable,
- (f) the date the organization took its own time extension and the reasons,
- (g) the date the current response time expires,
- (h) any relevant correspondence to the individual concerned respecting previous time extensions,
- (i) the amount of personal information requested or that must be searched, including the approximate number of written pages involved,
- (j) an explanation of how meeting the current response time would unreasonably interfere with the organization's operations,
- (k) what other organizations or public bodies under the *Freedom of Information and Protection of Privacy Act* have been, or will need to be, consulted about the access request, if applicable,
- (l) the reasons for the consultation,
- (m) the date on which the organization expects to complete its consultations with other organizations or public bodies under the *Freedom of Information and Protection of Privacy Act*, and
- (n) the proposed new response date or the number of additional days requested.

3.3 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. If, when the application is made, the current response time has expired, or is about to expire, the application must explain why it was not made earlier.

3.4 When 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.

4.0 Making A Complaint Or Request For Review (Sections 36 and 46)

4.1 An individual who has made an access request may request a review by the OIPC of the organization's decision, act or failure to act respecting the request.

4.2 An individual may also make a complaint to the OIPC that:

- (a) a duty imposed by the Act or the regulations under the Act has not been performed;
- (b) an extension of time for responding to a request is not in accordance with the Act;
- (c) a fee required by an organization under the Act is not reasonable;

- (d) a correction of personal information requested under the Act has been refused without justification;
 - (e) personal information has been collected, used, or disclosed by an organization in contravention of the Act.
- 4.3 A complaint or request for review to the OIPC must be made in writing, unless the individual making it has limited ability to read and write or a disability that impairs the individual's ability to communicate in writing. An individual who is unable to make a written complaint or request for review may do so orally. The OIPC will put the complaint or request for review in writing and send it to the individual to review and sign or otherwise affirm the contents.
- 4.5 A complaint or request for review must include the following information:
- (a) the individual's name, address and telephone number (and fax number if applicable),
 - (b) the name and address of the organization involved,
 - (c) the type of personal information involved,
 - (d) the steps the individual has taken to resolve the matter with the organization,
 - (e) if applicable, a copy of the access request and the organization's response,
 - (f) the reasons for challenging the organization's decision, action or practice, and
 - (g) the remedy or resolution the individual is seeking from the OIPC.
- 4.6 A complaint or request for review to the OIPC should be made at the earliest opportunity.
- 4.7 The Act requires an individual's request for review, other than a request for review respecting an organization's failure to respond within a required time period in the Act, to be delivered to the OIPC within:
- (a) 30 days of when the individual is notified of the circumstances, or
 - (b) a longer period permitted by the OIPC.
- 4.8 An application for OIPC permission to request a review outside the 30 days must be made in writing, unless the individual making it has limited ability to read and write or a disability that impairs the individual's ability to communicate in writing. The application must include the reasons for requesting the time extension and explain why it was not possible or reasonable for the individual to meet the 30-day time limit.

- 4.9 The Act does not impose a time limit for making a complaint or for requesting a review of an organization's failure to respond to an access request within a required time period in the Act. However, unless there are extenuating reasons, the OIPC will not generally act on a complaint, or such a request for review, made more than 6 months after the individual concerned had notice of the circumstances.
- 4.10 The Act requires the OIPC to give a copy of an individual's request for a review to the organization concerned and any other person the OIPC considers appropriate.
- 4.11 The Act permits, but does not require, the OIPC to give a copy of a complaint to the organization concerned or any other person the OIPC considers appropriate.
- 4.12 The OIPC will generally defer or adjourn acting on a complaint or request for review until the individual concerned shows that he or she has communicated directly with the organization and enabled it to respond to or attempt to resolve the matter.
- 4.13 When the OIPC proceeds on a complaint or request for review, it will generally first authorize an OIPC officer to mediate, investigate and attempt to settle the matter. The OIPC officer will ask each party to provide information necessary for the OIPC officer to investigate and understand the dispute.
- 4.14 The OIPC officer is not an advocate for either side. The OIPC officer's role is to investigate, and to discuss with the parties, the circumstances of the dispute and attempt to facilitate, through various means, either a full or partial settlement of the complaint or request for review. The OIPC officer's role is to ensure the individual has received all the information to which he or she is legally entitled, taking into account the circumstances of the case, the applicable provisions of the Act and previous relevant OIPC decisions. The OIPC officer also attempts to ensure that personal information has been properly collected, used, disclosed and protected and may recommend remedial action to ensure that this happens.

Mediation may result in a number of outcomes. These are some examples:

- Further information is released to the individual,
- A fee is confirmed or reduced,
- Additional records responsive to the request may be located,
- Referral to another agency for resolution of the issue (e.g., Better Business Bureau),
- Personal information is corrected or annotated,
- Improperly collected, used or disclosed personal information is destroyed,
- An individual's consent to collection, use or disclosure is obtained, amended or withdrawn,

- Reasons are provided for refusing access to personal information,
 - An explanation is provided as to how personal information is collected, used or disclosed,
 - An organization provides copies of its privacy policies and practices,
 - Privacy policies and practices are amended or clarified.
- 4.15 The OIPC officer will generally investigate on a consensual basis and will engage the OIPC's compulsory powers of production and inspection under the Act only if cooperation is not forthcoming or in other special circumstances.
- 4.16 If all or part of a complaint or request for review is not resolved through investigation and mediation, the OIPC officer will decide whether all or part of it should proceed to an inquiry under the Act. Before making that decision, the OIPC officer will give each party an opportunity to explain whether and why an inquiry is warranted in the circumstances.
- 4.17 Examples of circumstances where an inquiry will not be warranted include when:
- (a) no reasonable claim is disclosed;
 - (b) there is no reasonable prospect of success at inquiry;
 - (c) the matter is frivolous or vexatious;
 - (d) the matter is an abuse of process;
 - (e) the individual concerned has failed to accept a fair and reasonable remedy or resolution from the organization;
 - (f) the organization has provided the individual concerned with a fair and reasonable remedy or resolution;
 - (g) no meaningful remedy is available at inquiry.
- 4.18 When an OIPC officer has decided an inquiry is warranted, or the OIPC has referred a matter to inquiry without mediation and investigation, the OIPC will deliver a notice of inquiry to the parties and any other person the OIPC considered it appropriate to give a copy of the complaint or request for review.

5.0 Inquiries (Section 50)

- 5.1 The notice of inquiry will include the following information:
- (a) the OIPC decision-maker who is conducting the inquiry,
 - (b) the issues or questions to be resolved at inquiry,
 - (c) whether the inquiry is to be conducted in writing or orally,
 - (d) the schedule for submissions from the parties,
 - (e) a statement of the burden of proof where appropriate.

- 5.2 The OIPC will provide each party with a copy of the other party's submissions, except material the OIPC has received on a confidential basis.
- 5.3 The OIPC may receive material from a party on a confidential basis if its disclosure would reveal information that the Act would authorize or require the organization to refuse to disclose, or for other similar reasons.
- 5.4 A party asking the OIPC to receive material in confidence must, at the same time it provides that material, also provide written reasons why it should be received in confidence. If the OIPC is not persuaded the material should be received in confidence, it will give the party providing the material an opportunity to make further representations before deciding the question.
- 5.5 A party submitting confidential material must provide the OIPC with a copy clearly indicating the confidential portions and a second copy with the confidential portions removed, so the OIPC can provide the second copy to the other party to the inquiry.
- 5.6 If an inquiry concerns a review of an organization's decision, act or failure to act respecting access, the Act requires the inquiry to be completed within 90 days of the day the request for review was delivered to the OIPC (exclusive of deferral or adjournment to permit an attempt to resolve the matter) unless the OIPC specifies a later date.
- 5.7 If an inquiry concerns any other matter, the Act requires it to be completed within 30 days from the later of the day mediation ends (exclusive of deferral or adjournment to permit an attempt to resolve of the matter), and, if not sent to mediation, the day the matter was delivered to the OIPC.
- 5.8 A party's application to the OIPC for an extension of time to deliver a submission in an inquiry must be made in writing. The OIPC will generally permit an extension of time only when the reasons why the extension is required are fully explained in the application and the inquiry will be materially unfair if an extension is not permitted.
- 5.9 An inquiry will result in a written OIPC decision, which will often include an order under the Act. The OIPC will give a copy of the decision, and order if there is one, to the parties. The OIPC is also required to give a copy of an order to the minister responsible for the Act.
- 5.10 The OIPC will return documents that were the subject of an inquiry to the organization that provided them within 60 days of, as the case may be, closing the OIPC file respecting the matter, issuing the OIPC decision and any order, or the conclusion of proceedings for judicial review of the decision and order.

6.0 Authorization To Disregard Requests (Section 37)

- 6.1 An organization's application to the OIPC for authorization to disregard an individual's requests for access to or correction of personal information must be made in writing, and it must include the following information:
- (a) the name of the person making the requests the organization is applying to disregard;
 - (b) the dates and descriptions of the requests for information that the organization is applying to disregard;
 - (c) 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
 - (d) the proposed remedy the organization is seeking.
- 6.2 The organization must, at the same time it makes its application, also deliver a copy to the individual concerned and provide confirmation of this to the OIPC.
- 6.3. The OIPC will generally authorize an OIPC officer to mediate the application. The OIPC officer will contact the parties and mediate the matter as described above respecting requests for review or complaints.
- 6.4 If all or part of an authorization to disregard a request is not resolved through mediation, the OIPC officer will decide whether all or part of it should proceed to an inquiry under the Act. Before making that decision, the OIPC officer will give each party an opportunity to explain whether and why an inquiry is warranted in the circumstances.

