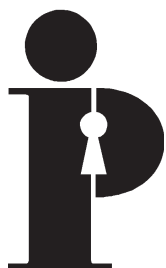


The Appeal Process and Ontario's Information and Privacy Commissioner



March 2010

Introduction

Ontario's *Freedom of Information and Protection of Privacy Act* and *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*) give you the right to request access to government-held information, including information about you.

However, the *Acts* also permit a government organization to refuse access to certain types of information (e.g., the personal information of other individuals). In such cases, you may find the decision to be acceptable. If you do not, then the appeal process is something you may want to learn more about.

The *Acts* also give you the right to ask a government organization to correct your personal information where you believe there is an error or omission. Where your request is refused, you may require that a statement of disagreement be attached to the information. You may also require that all persons or bodies to whom the information has been disclosed in the preceding year be notified of the correction or statement of disagreement. You can appeal a government organization's decision regarding your correction request.

The following are answers to questions most frequently asked about the appeal process.

I'm not satisfied with the government organization's decision regarding my access or correction request. What do I do?

You have the right to appeal to the Office of the Information and Privacy Commissioner of Ontario (IPC).

What is an appeal?

An appeal is a way to ask for a review of a government organization's decision regarding your request.

Do I have to pay to make an appeal?

Yes, in most cases. If you requested access to your personal information or correction of your personal information, the appeal fee is \$10. The appeal fee related to any other request for information is \$25. The correct fee must accompany your appeal and may be paid by cheque or money order, payable to "The Minister of Finance."

If you did not make a request and you are appealing a government organization's decision to release your personal information or other information in which you have an interest (see item (f)), you do not have to

pay an appeal fee.

Why would I appeal?

There are a number of reasons why you might decide to appeal, including:

- (a) you have been denied access to some or all of the information you requested;
- (b) you do not agree with the amount of the fee being charged;
- (c) you did not receive a decision regarding your request for information (a government organization has 30 days from the date your request was received in which to give you a decision);
- (d) you have been advised that an extension of the 30-day time period is necessary and you do not agree with the extension;
- (e) your request for a correction of your personal information has been denied;
- (f) someone is requesting your personal information — or other information in which you have an interest — from a government organization; the government organization has decided to release the information and you disagree with the decision.

How do I appeal?

Within 30 days of receiving a decision from the government organization:

- print out and complete the appeal application form from the **Forms** section of the IPC website (www.ipc.on.ca) or write a letter to the IPC describing the circumstances of your case. Be sure to include all relevant information, such as the name of the government organization and the file number it has assigned to your request;
- attach a copy of the government organization's decision letter;
- include a copy of your request, if you have made one;
- include the appeal fee.

If you are appealing a government organization's decision that "no records exist," you must tell the IPC why you think the records you requested exist.

Is my appeal automatically accepted?

The Registrar at the IPC reviews the appeal letter or form to determine how your particular file should be processed. You may be contacted by an analyst to obtain more information or documentation from you, explain the appeal process to you or redirect you to another government organization if it is in a better position to deal with your situation.

If it is clear that your appeal is not within the IPC's jurisdiction, it may be dismissed by the analyst.

Experience has also taught us that some cases do not warrant the full appeal process. The Registrar and analysts also have authority to dismiss cases that fall into this category.

Assuming my appeal proceeds, what happens next?

You will receive a written confirmation, which outlines the next step in processing your case. The IPC's goal is to maximize the number of appeals resolved informally, so most files are streamed to mediation. However, in some cases appeals are forwarded directly to adjudication.

What is mediation?

Mediation is the process by which the IPC tries to help you and the other parties either to reach a full settlement or to simplify the appeal. Mediation can succeed in settling some or all of the issues, reducing the number of records in dispute, clarifying the issues and helping the parties to better understand the *Acts*.

How does mediation work?

Successful mediation requires the commitment of all parties, and the role of the mediator is to help build this commitment and to facilitate discussion and negotiation. You can help by approaching mediation with an open mind and a willingness to listen to the views of the other parties, and a commitment to be flexible in order to reach a compromise. The mediator needs all the relevant information you have which relates to the appeal — things like copies of your correspondence and an understanding of the precise type of information you have requested or have asked to be corrected.

If mediation is unsuccessful, what is next?

In the majority of cases, mediation is successful. In situations where mediation is not completely successful,

you will receive a *mediator's report*, which summarizes what has happened on your file and identifies the issues that have not been resolved. After you have had a chance to review the *mediator's report*, the file is forwarded to the adjudication stage.

What does the adjudicator do?

The adjudicator proceeds to conduct an inquiry by preparing Notices of Inquiry and sending them to the parties, generally one at a time. The parties include you, the government organization and any others involved in the appeal. The Notices of Inquiry set out the issues the adjudicator believes need to be addressed in order to resolve the appeal.

What kind of inquiry is held?

Normally, inquiries are conducted in writing, and in most cases all parties are given an opportunity to submit written representations on the issues raised in the Notices of Inquiry. This is your opportunity to let the adjudicator know your position on the issue(s) in the appeal. The more specific you make your representations, the more helpful they are to the adjudicator. Representations must be received by the date stipulated in the Notice.

Are the representations shared?

Each party's representations will generally be shared with the other parties to the appeal, unless there is an overriding confidentiality concern. When submitting your representations, you must indicate which portions of your representations you wish to be withheld, if any, and explain the reasons for your request. The adjudicator will then decide whether to share your representations with the other parties.

Are all parties asked to submit representations?

The adjudicator may decide not to seek representations from a party, if the adjudicator decides the appeal should be resolved in favour of that party.

How is the inquiry completed?

Once the adjudicator has considered all representations and reviewed the records, he or she will then decide how each issue should be resolved and prepare a written order. Some of the things he or she may order are:

- the release of some or all of the records;
- the modification or waiver of a fee;

- the correction of your personal information.

All orders include reasons for the adjudicator's decision, and are sent by mail to you and the other parties to the appeal.

How long does the appeal take?

It depends on a number of factors, including the nature and amount of requested information, the issues in the appeal, the particular process selected for your appeal and the willingness of the parties to work towards resolving the appeal.

If I have more questions, who can answer them?

If you have any questions about the appeal process or about Ontario's access and privacy legislation, please call the IPC and ask to speak with an analyst.

About the Commissioner

The Information and Privacy Commissioner is appointed by the Ontario Legislature. This independence from the government of the day allows the Commissioner to be impartial when carrying out duties under the *Acts*.

Other brochures available from the IPC:

Access to Information under Ontario's Information and Privacy Acts

Your Privacy and Ontario's Information and Privacy Commissioner

A Mini Guide to Ontario's Freedom of Information and Protection of Privacy Act

A Mini Guide to Ontario's Municipal Freedom of Information and Protection of Privacy Act

The Personal Health Information Act and Your Privacy

For more information, call or write:

Information and Privacy Commissioner of Ontario
2 Bloor Street East, Suite 1400

Toronto, Ontario M4W 1A8

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