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# Collection, Use, Disclosure and Other Complaints

*Personal Health Information Protection Act*



Information and Privacy Commissioner,  
Ontario, Canada

*December 2004*

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## Introduction

The *Personal Health Information Protection Act* (the *Act*) has been put into place to help protect the privacy and confidentiality of the personal health information of any individual who receives health care services in Ontario.

The *Act* imposes strict limits on the information that a health information custodian (such as a doctor or hospital) may collect, use and disclose about individuals, and establishes rules to safeguard that information.

If you feel that a custodian has, or is about to, inappropriately collect, use or disclose your personal health information, or does not have proper information practices in place, you have a right to make a *complaint* to the Information and Privacy Commissioner of Ontario (IPC).

***What should I do if I feel that a health information custodian has wrongfully collected, used or disclosed my personal health information?***

You should call, write or visit the custodian, and attempt to settle the matter yourself. If that does not work, you may file a complaint with the IPC.

### ***What else can I complain about?***

In addition to complaints about collection, use or disclosure, you may also complain about a breach of any provision of the *Act*. For example, you may complain that a custodian:

- does not have written information practices available on request;
- does not have reasonable safeguards in place to protect personal health information; or
- disposes of personal health information in a manner that is not secure.

### ***How do I file a complaint with the IPC?***

All complaints to the IPC must be in writing. Potential complainants should either write a letter to the IPC, or fill in the form that is available from the IPC's website: <http://www.ipc.on.ca/docs/cudfrm-e.pdf>. If you decide to use this form, it should be printed and mailed to the *registrar* of the IPC. This form cannot be submitted electronically. Any relevant documentation should be attached to the complaint form.

Please note that you have *one year* from the time that you become aware of the problem to file the complaint. (Access and correction complaints are an exception; you have a *six-month* time limit from the time that you receive a custodian's decision to file these complaints). The IPC has produced a separate brochure specifically addressing complaints about access or correction of personal health information. Please see that brochure for a complete description of the access/correction complaint process.

### ***Is there a cost associated with my complaint?***

No, there is no cost to file a complaint.

### ***What will the IPC do with my complaint?***

The *registrar* at the IPC will review your complaint to determine how your file should be dealt with. At this point, you may be contacted by an *intake analyst*, who will obtain more information, further explain the complaint process or redirect you to another organization that may be in a better position to deal with your situation.

At this stage, the *registrar* or an *intake analyst* may do the following:

- attempt to resolve the complaint informally;
- make an order (if it relates to an urgent matter);
- dismiss the complaint (for example, if it is outside the jurisdiction of the IPC);
- recommend that you try to settle the complaint with the custodian; or
- prepare the complaint file for the mediation or review stage.

### ***What happens at the mediation stage?***

Mediation is the process by which the IPC tries to assist you and the custodian to either reach a full or partial settlement of your complaint, or to simplify the matters at issue in your complaint.

Mediation can be successful in helping the parties to understand the *Act*.

### ***How does mediation work?***

Successful mediation requires the commitment of all the parties. The role of the *mediator* is to help build this commitment and to facilitate discussion and negotiation.

As the complainant, you can help the process by approaching mediation with an open mind, 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 relevant information you have that relates to your complaint – whether it is copies of correspondence, or a precise description of the information at issue.

### ***If mediation is unsuccessful, what happens next?***

Our experience has been that mediation is successful in resolving most matters that come to the attention of the IPC. However, in the event that there is not a full settlement, you will receive a letter from the *mediator* that outlines the issues that have been resolved, those that are outstanding, and advising that the file is being streamed to the review stage of the process.

### ***What happens during a review?***

The review stage is the final stage of the process. During a review, an *investigator* is assigned to investigate and dispose of all outstanding issues.

### ***How are reviews conducted?***

Normally, reviews will be conducted in writing, and in most cases all parties are given an opportunity to submit written representations on the issues.

Representations are your opportunity to express your position about the complaint. The more specific your representations, the more useful they will be to the *investigator*. Representations must be received by the date stipulated by the *investigator*.

### ***What happens after representations are submitted?***

After reviewing the representations of all the parties to the complaint, the *investigator* will prepare a draft order outlining the results of the review and include any findings and remedies.

The parties to the complaint will have an opportunity to provide comments to the investigator about the content of the draft order. In response to these comments, the investigator may change the order, keep the order the same, or seek further comments on the issues.

### ***How is a review completed?***

A review is complete when all comments have been received, and the *investigator* has issued a final order.

At the conclusion of the review the *investigator* may:

- order the custodian to cease a collection, use or disclosure of personal health information;
- order an individual to perform a duty under the *Act*;
- order the custodian to dispose of personal health information;
- order the custodian to implement an information practice;  
or
- make comments or recommendations on the privacy implications of any matter under the *Act*.

All orders include reasons. An order regarding your complaint would be sent by mail to you and any other parties involved in the complaint. While the IPC will make orders available to the public, the identity of the complainant will not be made public.

### ***How long does a complaint take?***

The length of time that it takes for the IPC to process your complaint will depend on a number of factors, including the nature of the complaint, the complexity of the issues raised, and the willingness of the custodian and you to work together to achieve a settlement.

### ***If I have more questions, who can answer them?***

If you have any questions about the complaint process, please call the IPC and ask to speak to an *intake analyst*.

### ***About the Commissioner***

The Information and Privacy Commissioner of Ontario is appointed by the Ontario Legislature and is independent of the government of the day.

### ***Other health privacy materials available from the Information and Privacy Commissioner:***

*Frequently Asked Questions: Personal Health Information Protection Act*

*The Personal Health Information Protection Act and Your Privacy*

*A Guide to the Personal Health Information Protection Act*

*Your Health Information: Your Rights*

*Access and Correction Complaints*

### ***For more information, call or write:***

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