

Code of Procedure

for Matters under the *Personal Health
Information Protection Act, 2004*



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

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PART I – INTRODUCTION

1 APPLICATION

- 1.01 This Code applies to Complaints, IPC-Initiated Files, and Custodian-Reported Files under the *Personal Health Information Protection Act, 2004*.

2 PURPOSE AND INTERPRETATION

- 2.01 This Code is to be broadly interpreted in the public interest in order to secure the most just, expeditious and least expensive resolution of every File.
- 2.02 Where specific procedures are not set out in this Code, the IPC may do whatever is permitted by law to enable it to effectively and completely mediate, investigate or adjudicate a File and to ensure compliance with the provisions of any Order.
- 2.03 A failure to follow any procedure in this Code does not for that reason alone render a File, or any step in a File, invalid.
- 2.04 The IPC may in its discretion depart from any procedure in this Code where it is just and appropriate to do so.
- 2.05 The IPC may exercise any of its powers and perform any of its duties on its own initiative or at the request of a Party.
- 2.06 The IPC may issue practice directions and rulings relating to the procedures in this Code at any time, including before or during any File.
- 2.07 The IPC shall interpret the procedures in this Code in a manner that ensures, to the extent reasonably possible, that persons with disabilities have full access to the IPC's processes.
- 2.08 A Party or any other person involved in a File is entitled to reasonable accommodation by the IPC under the *Human Rights Code*, and should notify the IPC as soon as possible if accommodation is required.
- 2.09 Where the IPC receives a Complaint that relates both to access to or correction of a record of Personal Health Information and to other contraventions, or potential contraventions, of the *Act*, the IPC will attempt to address all aspects of the Complaint in a single File. Where this is not practicable, the IPC may open a separate File or File(s) with respect to each part of the Complaint, and process each part separately.
- 2.10 Where the same facts give rise to matters under the *Act* and the *Freedom of Information and Protection of Privacy Act* and/or the *Municipal Freedom of Information and Protection of Privacy Act*, the

IPC will attempt to adjudicate such matters together, and may vary the procedures set out in this Code to avoid duplication of steps, Representations, and proceedings.

2.11 Where this Code contains a time frame for doing an act:

- a) the days are calculated as calendar days;
- b) the days are counted by excluding the day on which the first act is done and including the day on which the second act is done; and
- c) where the time for doing an act expires on a day when the IPC's offices are closed, the act may be done on the next day that the IPC's offices are open.

3 DEFINITIONS

3.01 In this Code, the following definitions apply:

- Access/
Correction
Complaint** A complaint from an individual (or that individual's substitute decision-maker) relating to access to, or correction of, a record of Personal Health Information relating to that individual under Part V of the *Act* and, for greater certainty, including:
- an Expedited Access Complaint;
 - a Failure to Provide Access Complaint;
 - a complaint regarding a Custodian's refusal, or deemed refusal, of a request for access to, or correction of, a record of Personal Health Information;
 - a complaint regarding fees for providing access to a record of Personal Health Information;
 - a complaint regarding a Custodian's decision to deny a complainant's request for waiver of a fee for providing access to a record of Personal Health Information;
 - a complaint regarding a Custodian's decision to extend the time limit for responding to a request for access to, or correction of, a record of Personal Health Information; and
 - a complaint regarding a Custodian's statement that a requested record does not exist or cannot be located.

Act	The <i>Personal Health Information Protection Act, 2004</i> , together with its regulations.
Adjudication Stage	The third of the three main stages of the IPC's processes, in which an Adjudicator conducts a Review under the <i>Act</i> , or determines that no Review is warranted.
Adjudicator	The Commissioner, the Assistant Commissioner or any other person to whom the Commissioner has delegated the power to perform the functions at the Adjudication Stage of the IPC's processes, including commencing a Review under the <i>Act</i> and issuing Orders.
Affected Person	A person affected by the subject-matter of a Complaint, Custodian-Reported File, or IPC-Initiated File, but who is not a Respondent or Complainant in such File.
Analyst	A person who, in addition to the Registrar, performs the functions at the Intake Stage of the IPC's processes.
Assistant Commissioner	The Assistant Commissioner for Personal Health Information appointed under the <i>Freedom of Information and Protection of Privacy Act</i> .
Collection, Use, and Disclosure Complaint	A complaint about any contravention, or potential contravention, of the <i>Act</i> other than an Access/Correction Complaint.
Commissioner	The Information and Privacy Commissioner of Ontario.
Complainant	A person who makes a Complaint.
Complaint	An Access/Correction Complaint and/or a Collection, Use, and Disclosure Complaint, as the context indicates.
Custodian	A Health Information Custodian (see "Health Information Custodian" below).
Custodian-Reported File	A file initiated by the IPC in response to a report by a Custodian of a contravention, or potential contravention, of the <i>Act</i> that relates to the reporting Custodian.
Decision	A decision, which may include an Order, made pursuant to the IPC's authority under the <i>Act</i> .

Deemed Refusal Complaint	An Access/Correction Complaint relating to whether a Custodian has responded to a request for access to, or correction of, a record of Personal Health Information within the time frame required by the <i>Act</i> .
Expedited Access Complaint	An Access/Correction Complaint relating to whether a Custodian has refused to respond to a request for access to a record of Personal Health Information on an expedited basis in accordance with section 54(5) of the <i>Act</i> , or whether the Custodian is deemed to have refused to provide access to a record of Personal Health Information on an expedited basis.
Failure to Provide Access Complaint	An Access/Correction Complaint relating to whether a Custodian has failed to provide access to a record of Personal Health Information in accordance with its decision to grant access.
File	A Complaint, Custodian-Reported File, and/or IPC-Initiated File, as the context indicates.
Health Information Custodian	A person who is, or is alleged to be, a “health information custodian” within the meaning of the <i>Act</i> .
Intake Stage	The first of the three main stages of the IPC’s processes, in which the IPC gathers and clarifies the preliminary facts, informally resolves Files and closes Files. The Intake Stage also conducts Reviews of Deemed Refusal Complaints, Expedited Access Complaints, and Failure to Provide Access Complaints.
IPC	The Office of the Information and Privacy Commissioner of Ontario and, where the context indicates, the Commissioner, Assistant Commissioner, or any other person to whom the Commissioner has delegated the power to perform functions and make Decisions under the <i>Act</i> .
IPC-Initiated File	A file, initiated by the IPC where the IPC learns of a contravention or potential contravention of the <i>Act</i> , which is not a Custodian-Reported File or a Complaint.

**Mediation/
Investigation
Stage** The second of the three main stages of the IPC's processes. Where the IPC receives a Complaint, this stage is referred to as "mediation" and a mediator is assigned to attempt to consensually resolve the Complaint. In a Custodian-Reported File or IPC-Initiated File, this stage is referred to as "investigation" and an investigator is assigned to determine whether the IPC is satisfied with the response of the Respondent to the matter and, where the IPC is satisfied, the File is closed.

**Mediator/
Investigator** A person who performs the functions at the Mediation/
Investigation stage of the IPC's processes.

**Mediator's/
Investigator's
Report** A document prepared by a Mediator/Investigator at the end of the Mediation/Investigation Stage setting out the facts gathered, the issues in dispute, and any settlement reached in the context of mediation. The Report is provided to the Parties, and, if the File proceeds to the Adjudication Stage, is also provided to the Adjudicator. Note that a Mediator's/Investigator's Report will not be prepared where a Custodian-Reported File or IPC-Initiated File is closed at the Investigation Stage.

**Notice of
Review** A document prepared by the IPC at the commencement of a Review, setting out the issues in the Review. The Notice of Review may invite Representations on those issues.

Order An order pursuant to section 61 of the *Act*, which may include comments and/or recommendations.

Party A Respondent and/or Complainant, and also an Affected Person where that person has provided, or been given the opportunity to provide, Representations to the IPC.

**Personal Health
Information** "Personal health information" within the meaning of the *Act*.

Registrar A person employed by the IPC who receives, streams, and closes Files at the Intake Stage.

Representations The documents, other evidence and/or arguments a Party provides to the IPC setting out its position with respect to a File.

**Request for
Information** A written request sent to a Party by the IPC requesting information with respect to a File.

Respondent	A person against whom a Complaint is made, and/or a person whose conduct is the subject of a File.
Review	A proceeding commenced pursuant to sections 57 and/or 58 of the <i>Act</i> , which may result in an Order.
Screening	A process in which the IPC reviews a File and decides whether to close it or stream it to another stage of the IPC's processes.
Streaming	A process by which a Complaint, Custodian-Reported File, or IPC-Initiated File is transferred to another stage of the IPC's processes.

PART II – COMPLAINTS

4 ACCESS/CORRECTION COMPLAINTS

- 4.01 A person who wishes to make an Access/Correction Complaint shall send written notice to the Registrar, by way of a completed Access/Correction Complaint Form (see Practice Direction 4) or in any other written form. This notice should include:
- a) the Complainant's name, address and telephone number;
 - b) the Custodian's name, address and telephone number, and the file number assigned by the Custodian (if any);
 - c) a copy of the Custodian's decision (if any);
 - d) a copy of the request, and any other documents relevant to the Complaint;
 - e) a brief explanation of the basis for the Complaint;
 - f) a statement of whether or not the Complainant consents to the IPC's inspecting a record of, requiring evidence of, or inquiring into, his or her Personal Health Information as reasonably necessary for the purpose of processing the Complaint; and
 - g) if the Complaint is made by the Complainant on behalf of another person, any documentation authorizing the Complainant to act on behalf of that person with respect to the issues in the Complaint.
- 4.02 Where a Complainant does not provide the consent referred to in section 4.01(f) of this Code, the IPC will consider whether it can fairly and adequately address the Complaint without inspecting a record

of, requiring evidence of, or inquiring into, the Complainant's Personal Health Information. Where the IPC determines that it cannot fairly and adequately address the Complaint without doing so, the IPC may, after seeking Representations from the Complainant and, where appropriate, from the Respondent(s) and any other persons:

- a) close the Complaint; or
- b) commence a Review and dispense with the Complainant's consent pursuant to section 60(13) of the *Act*, where the conditions applicable to that section are satisfied.

4.03 Counsel or an agent may make a Complaint on behalf of a Complainant. The IPC may require the Complainant to complete a form authorizing counsel or the agent to act as such for the purpose of the Complaint.

5 COLLECTION, USE, AND DISCLOSURE COMPLAINTS

5.01 A person who wishes to make a Collection, Use, and Disclosure Complaint shall send written notice to the Registrar, by way of a completed Collection, Use, and Disclosure Complaint Form (see Practice Direction 5) or in any other written form. The notice should include:

- a) the Complainant's name, address and telephone number;
- b) the name, address, and telephone number of, and the file number assigned by (if any), the person about whom the Complaint is made;
- c) a copy of any documents relevant to the Complaint;
- d) a brief explanation of the basis for the Complaint;
- e) a statement of whether or not the Complainant consents to the IPC's inspecting a record of, requiring evidence of, or inquiring into, his or her Personal Health Information as reasonably necessary for the purpose of processing the Complaint; and
- f) if the Complaint is made by the Complainant on behalf of another person, any documentation authorizing the Complainant to act on behalf of that person with respect to the issues in the Complaint.

5.02 Where a Complainant does not provide the consent referred to in section 5.01(e) of this Code, the IPC will consider whether it can fairly and adequately address the Complaint without inspecting a record of, requiring evidence of, or inquiring into, the Complainant's Personal Health Information. Where the IPC determines that it cannot fairly and adequately address the Complaint without doing so, the IPC may, after seeking Representations from the Complainant and, where appropriate, from the Respondent(s) and any other persons:

- a) close the Complaint; or

- b) commence a Review and dispense with the Complainant's consent pursuant to section 60(13) of the *Act*, where the conditions applicable to that section are satisfied.

5.03 Counsel or an agent may make a Collection, Use, and Disclosure Complaint on behalf of a Complainant. The IPC may require the Complainant to complete a form authorizing counsel or the agent to act as such for the purpose of the Complaint.

6 SHARING THE COMPLAINT

6.01 By filing a Complaint with the IPC, the Complainant consents to the sharing of the Complainant's name, the Complaint form, and all attachments provided with the Complaint form with the other Parties, unless the Complainant expressly informs the IPC otherwise. A Complainant who does not consent to this sharing should provide detailed reasons to support his or her position.

6.02 Where a Complainant does not consent to sharing the Complainant's name, the Complaint form, and/or all attachments provided with the Complaint form, the IPC will consider whether it can fairly and adequately address the Complaint without sharing this information with the other Parties. Where the IPC cannot fairly and adequately address the Complaint without sharing this information with the other Parties, the IPC may close the Complaint.

7 INTAKE STAGE

7.01 The IPC screens all Complaints received. The IPC may close a Complaint for any reason, including that the Complaint is not within its jurisdiction, the Complaint is frivolous or vexatious, the Respondent(s) have responded adequately to the Complaint, or the Complaint has no reasonable prospect of success.

7.02 Before deciding whether to close a Complaint at the Intake Stage, the IPC may invite Representations from the Complainant, the Respondent(s) and any Affected Person(s).

7.03 The IPC will give the Complainant and the Respondent(s) written notice of any Decision to close a Complaint File at this stage and may give any Affected Person(s) written notice of any Decision to close a Complaint File at this stage.

7.04 Where a Complaint is not closed at the Intake Stage, the IPC will stream it to the Mediation Stage or the Adjudication Stage.

8 MEDIATION STAGE

- 8.01 At the Mediation Stage, a Mediator may contact the Parties (including any Affected Person(s)), investigate the circumstances of the Complaint, and attempt to:
- a) effect a settlement of all of the issues in the Complaint; or
 - b) if all of the issues in the Complaint cannot be settled, narrow the issues that proceed to the Adjudication Stage.
- 8.02 Where a Complaint is settled at the Mediation Stage, the Mediator will prepare a Mediator's Report outlining the settlement and will close the file. The Mediator's Report will be provided to the Parties.
- 8.03 Where a Complaint is not settled at the Mediation Stage, the File will be streamed to the Adjudication Stage. The Mediator will prepare a Mediator's Report outlining the facts gathered at mediation and the issues in dispute and send a copy to the Parties. Where a Party believes that the Mediator's Report contains an error or omission, the Party may request that the Mediator amend the report. Such a request shall be made in writing within 10 days after the report is sent. The Mediator may amend the report on the request of a Party or on his or her own initiative. Where the report is not amended, the Mediator will advise the relevant Party, in writing, of his or her Decision regarding the request. Where the report is amended, the Mediator will send a copy of the amended report to the Parties.
- 8.04 The Mediator's Report and the IPC's file will be provided to the Adjudicator, but information subject to mediation privilege will be sealed before the IPC's file is provided to the Adjudicator unless all Parties expressly consent.

9 ADJUDICATION STAGE

- 9.01 At the Adjudication Stage, an Adjudicator may conduct a Review to dispose of some or all of the issues in the Complaint, or may decide not to conduct a Review and close the File.
- 9.02 Where the Adjudicator reviews the Mediator's Report and the IPC's file and forms the preliminary view that there are no reasonable grounds to commence a Review, the Adjudicator may seek Representations from the Complainant, Respondent(s), and/or any Affected Person(s) on whether a Review should be commenced. Upon receipt of such Representations, the Adjudicator may decide not to conduct a Review. Where the Adjudicator decides not to conduct a Review, the Adjudicator will notify the Parties in writing of such a Decision.

- 9.03 If the Adjudicator decides to commence a Review, the Adjudicator will begin the Review by sending a Notice of Review to the Party(ies) bearing the initial onus (the first Party), as determined by the Adjudicator, inviting Representations on the issues in the File.
- 9.04 Upon receipt of the first Party's Representations, the Adjudicator may, if he or she considers it necessary, send either the same or a modified Notice of Review to the other Party(ies), inviting Representations on the issues in the Complaint.
- 9.05 Upon receipt of the other Party(ies)'s Representations, the Adjudicator may, if he or she considers it necessary, invite further Representations in reply.
- 9.06 In a Review of a Complaint involving Affected Person(s), the Adjudicator may send either the same or a modified Notice of Review to any Affected Person(s) seeking Representations when their interests are engaged.
- 9.07 Upon receipt of the Representations from any Affected Person(s), the Adjudicator may invite further Representations in reply.
- 9.08 Where a Review involves multiple Complainants, Respondents, and/or Affected Person(s), the Adjudicator may vary these procedures to permit the Parties to respond to the Representations of similarly situated Parties.
- 9.09 The Adjudicator may make further requests for Representations, as needed, in order to dispose of some or all of the issues in the Review.
- 9.10 At the conclusion of the Review, the Adjudicator will issue a Decision, which may include an Order, disposing of some or all of the issues in the Complaint. The Decision will be provided to the Parties, and may also be provided to any other persons as appropriate.

10 SPECIAL PROCEDURES FOR DEEMED REFUSAL, FAILURE TO PROVIDE ACCESS AND EXPEDITED ACCESS COMPLAINTS

- 10.01 The procedures regarding Access/Correction Complaints in this Part apply to Deemed Refusal, Failure to Provide Access and Expedited Access Complaints, except as specifically modified in this section.
- 10.02 Deemed Refusal and Failure to Provide Access Complaints are handled by an Analyst at the Intake Stage. The Analyst will send a Notice of Review to the Parties on receipt of the Deemed Refusal or Failure to Provide Access Complaint. The Analyst may then attempt to informally resolve the Complaint. All communications forming part of the attempt to informally resolve the Complaint may be relied upon by the IPC in deciding the Complaint.

- 10.03 If a Deemed Refusal or Failure to Provide Access Complaint is not resolved within the time period specified in the Notice of Review, the Analyst may conduct a Review at the Intake Stage and issue a Decision, which may include an Order, disposing of the issues in the Complaint. The Decision will be provided to the Parties, and may also be provided to any other persons as appropriate.
- 10.04 Expedited Access Complaints may be decided by the IPC on an expedited basis, as determined by the Registrar.
- 10.05 Where an Expedited Access Complaint is to be decided by the IPC on an expedited basis, the file is handled by an Analyst at the Intake Stage. The Analyst may attempt to informally resolve the Complaint. All communications forming part of the attempt to informally resolve the Complaint may be relied upon by the IPC in deciding the Complaint.
- 10.06 Where no resolution of an Expedited Access Complaint is reached, the Analyst may send a Notice of Review to the Parties seeking Representations, and decide the Complaint on an expedited basis, after which the Analyst will issue a Decision, which may include an Order, disposing of the issues in the Complaint. The Decision will be provided to the Parties, and may also be provided to any other persons as appropriate.

PART III – CUSTODIAN-REPORTED FILES AND IPC-INITIATED FILES

11 CUSTODIAN-REPORTED FILES

- 11.01 Where a Custodian reports a contravention, or potential contravention, of the *Act* to the IPC that relates to the reporting Custodian, the IPC may open a Custodian-Reported File.

12 IPC-INITIATED FILES

- 12.01 Where the IPC learns of a contravention, or potential contravention, of the *Act* other than through a Custodian-Reported File or Complaint, the IPC may open an IPC-Initiated File.

13 INTAKE STAGE

- 13.01 Notwithstanding Part II and sections 11.01 and 12.01 of this Code, the Registrar may decide to address a Complaint as a Custodian-Reported File (if the matter has also been reported to the IPC by the Custodian to whom the matter relates) or an IPC-Initiated File, where:

- a) the Complaint relates to a systemic or widespread contravention, or potential contravention, of the *Act*; or
 - b) the IPC has received, or expects to receive, many Complaints regarding the same contravention, or potential contravention, of the *Act* and it would be impractical to adjudicate each Complaint separately.
- 13.02 Where the IPC decides to address a Complaint as a Custodian-Reported File or an IPC-Initiated File in accordance with section 13.01 of this Code, the IPC may invite Representations from a Complainant on any Decision in the Custodian-Reported File or IPC-Initiated File and/or may treat the Complainant as an Affected Person.
- 13.03 The IPC screens all Custodian-Reported Files and IPC-Initiated Files, and may close such Files for any reason, including where the IPC is satisfied with the response of the Respondent(s) to the contravention, or potential contravention, of the *Act* and no further investigation is needed.
- 13.04 Before deciding whether to close a Custodian-Reported File or an IPC-Initiated File at the Intake Stage, the IPC may invite Representations from the Respondent(s) and/or any Affected Person(s).
- 13.05 The IPC will give the Respondent(s) written notice of any Decision to close a Custodian-Reported File or an IPC-Initiated File at the Intake Stage and may give any Affected Person(s) written notice of any Decision to close a Custodian-Reported File or an IPC-Initiated File at the Intake Stage.
- 13.06 Where a Custodian-Reported File or an IPC-Initiated File is not closed at the Intake Stage, the IPC will stream the File to the Investigation Stage or the Adjudication Stage.

14 INVESTIGATION STAGE

- 14.01 At the Investigation Stage, the Investigator will gather and clarify the facts relating to the contravention, or potential contravention, of the *Act* by the Respondent(s), and may prepare and send a Request for Information to the Respondent(s).
- 14.02 Where the IPC is satisfied with the Response of the Respondent(s) to the contravention, or potential contravention, of the *Act* the IPC may close the File.
- 14.03 Before deciding whether to close a Custodian-Reported File or an IPC-Initiated File at the Investigation stage, the IPC may invite submissions from the Respondent(s) and/or any Affected Person(s).
- 14.04 Where the Investigator closes a Custodian-Reported File or an IPC-Initiated File in accordance with section 14.02 of this Code, the Investigator will issue a Decision. The Decision will be provided to the

Respondent(s), and may also be provided to any other persons as appropriate.

- 14.05 Where the IPC is not satisfied with the Response of the Respondent(s) to a contravention, or potential contravention, of the *Act*, the File will be streamed to the Adjudication Stage. The Investigator will prepare an Investigator's Report outlining the facts gathered at Investigation and the issues in dispute and send a copy to the Parties. Where a Party believes that the Investigator's Report contains an error or omission, the Party may request that the Investigator amend the report. Such a request shall be made in writing within 10 days after the report is sent. The Investigator may amend the report on the request of a Party or on his or her own initiative. Where the report is not amended, the Investigator will advise the relevant Party, in writing, of his or her Decision regarding the request. Where the report is amended, the Investigator will send a copy of the amended report to the Parties.
- 14.06 The Investigator's Report and the IPC's file will be provided to the Adjudicator.

15 ADJUDICATION STAGE

- 15.01 At the Adjudication Stage, an Adjudicator may conduct a Review to dispose of some or all of the issues in a Custodian-Reported File or IPC-Initiated File, or may decide not to conduct a Review and close the File.
- 15.02 Where the Adjudicator reviews the Investigator's Report and the IPC's file and forms the preliminary view that there are no reasonable grounds to commence a Review, the Adjudicator may seek Representations from the Respondent(s) and/or any Affected Person(s) on whether a Review should be commenced. Upon receipt of such Representations, the Adjudicator may decide not to conduct a Review, and close the File. Where the Adjudicator decides not to conduct a Review, the Adjudicator will notify the Parties in writing of such a Decision. The Decision may also be provided to any other persons as appropriate.
- 15.03 If the Adjudicator decides to commence a Review, the Adjudicator begins the Review by sending a Notice of Review to the Respondent(s), inviting Representations on the issues in the File.
- 15.04 Upon receipt of the Representations of the Respondent(s), the Adjudicator may invite Representations from any Affected Person(s).
- 15.05 Upon receipt of the Representations from any Affected Person(s), the Adjudicator may invite further Representations from the Respondent(s) in reply.

- 15.06 Where a Review involves multiple Respondents and/or Affected Persons, the Adjudicator may vary these procedures to permit the Parties to respond to the Representations of similarly situated Parties.
- 15.07 The Adjudicator may make further requests for Representations, as needed, in order to dispose of some or all of the issues in the Review.
- 15.08 At the conclusion of the Review, the Adjudicator will issue a Decision, which may include an Order, disposing of some or all of the issues in the Custodian-Reported or IPC-Initiated File. The Decision will be provided to the Party(ies), and may also be provided to any other persons as appropriate.

PART IV – GENERAL

16 PROVIDING RECORDS TO THE IPC

- 16.01 The IPC may request that any person provide the IPC with books, records, documents, information or information practices relevant to the subject-matter of a File.
- 16.02 Where the individual to whom a record of Personal Health Information relates consents, or the IPC makes a determination under section 60(13) of the *Act*, the IPC may request that any person provide the IPC with a record of Personal Health Information as is reasonably necessary for the purposes of the File.
- 16.03 In a Review, the IPC may make a written demand for the production of anything referred to in sections 16.01 and/or 16.02 of this Code. The person who receives the demand shall comply with the demand in accordance with the timeline specified by the IPC and shall provide to the IPC whatever assistance is reasonably necessary to facilitate this production.

17 CORRESPONDENCE SENT TO IPC

- 17.01 For the purposes of this Code, correspondence sent to the IPC is not effective until received by the IPC.

18 SHARING OF REPRESENTATIONS

- 18.01 The IPC may share Representations received from a Party with the other Party(ies), unless a Party requests that its Representations not be shared and the IPC decides that some or all of the Representations should be withheld.

- 18.02 Where a Party requests that its Representations not be shared, that Party shall indicate clearly and in detail which information the Party wishes the IPC to withhold from the other Party(ies), and shall explain clearly and in detail the reasons for its request with specific reference to the criteria in section 18.03 of this Code.
- 18.03 The IPC may withhold information contained in a Party's Representations where:
- a) sharing the information would reveal the substance of a record claimed to be exempt from a right of access;
 - b) the information would be exempt if contained in a record subject to the *Act*;
 - c) the information would identify a person, other than a Complainant or Respondent, who has provided information to the IPC and who has requested that the IPC keep that person's identity confidential; or
 - d) the information should not be shared with the other Party(ies) because:
 - i. the Party communicated the information to the IPC in confidence that it would not be shared with the other Party(ies);
 - ii. confidentiality is essential to the full and satisfactory maintenance of the relationship between the IPC and the Party;
 - iii. the relationship is one which in the opinion of the community ought to be diligently fostered; and
 - iv. the injury to the relationship that would result from sharing the information is greater than the benefit gained from the correct disposal of the File.
- 18.04 The IPC may seek Representations from the other Party(ies) on whether a request to withhold Representations should be granted.
- 18.05 Should the IPC decide not to accept a Party's submission that information in its Representations should be withheld, the IPC will notify the Party of this Decision and will not share the information for the period of time specified in the notice to the Party, which shall not be less than 14 days.

19 TIMELINE FOR PROVIDING REPRESENTATIONS TO IPC

- 19.01 A Party who chooses to submit Representations to the IPC shall do so by the date specified by the IPC. A Party seeking a time extension of seven days or less may make this request to the IPC in writing or by telephone. A Party seeking a time extension in excess of seven days

shall make this request in writing, in accordance with the procedure in section 29 of this Code.

19.02 If any Party does not submit Representations by the date specified by the IPC, or such other date as may be determined by the IPC in response to a request for a time extension, the File may proceed and a Decision, which may include an Order against that Party, may be issued in the absence of such Representations.

20 OTHER INDIVIDUALS OR ORGANIZATIONS

20.01 The IPC may notify and invite Representations from any person that may be able to present useful information to aid in the disposition of a File.

21 IPC'S OBTAINING ADDITIONAL INFORMATION

21.01 The IPC may, at any time, request additional information from any Party, either orally or in writing, including by means of a Request for Information.

22 REPRESENTATION BY COUNSEL/AGENTS

22.01 A Party may be represented by counsel or an agent, and the IPC may require a Party to complete a form authorizing counsel or an agent to act as such for the purpose of a File.

22.02 The IPC may disqualify counsel or an agent from representing a Party in a File where his or her continued representation would lead to an abuse of process.

23 INTERIM ORDERS/DECISIONS

23.01 In a Review, the IPC may issue interim Orders to prevent contraventions or potential contraventions of the *Act* pending the final determination of the issues raised in the Review, where the IPC is satisfied that the:

- a) Review raises a serious question to be adjudicated;
- b) failure to issue an interim Order would result in irreparable harm; and
- c) balance of convenience favours issuing the interim Order.

23.02 At any stage of the IPC's processes, the IPC may issue interim Decisions determining procedural or other interlocutory matters, which may include making preliminary factual or legal determinations.

24 STAYS

- 24.01 The IPC may stay any provision of an Order, at any time, on the request of a Party or on its own initiative.
- 24.02 Before deciding whether to stay a provision of an Order, the IPC may notify and invite Representations from the Parties.

25 LITIGATION GUARDIANS/MENTALLY INCAPABLE PARTIES

- 25.01 For the purposes of this section, a Party has “mental capacity” if the Party is able to:
- a) understand the information that is relevant to making decisions about the issues arising in a File; and
 - b) appreciate the reasonably foreseeable consequences of a decision or lack of decision about the issues arising in a File.
- 25.02 A Party is presumed to have mental capacity to make decisions about the issues arising in a File, unless the IPC has reasonable grounds to believe that a Party does not have mental capacity.
- 25.03 The IPC may, at the request of a Party or on its own initiative, request Representations on the mental capacity of a Party to make decisions about the issues arising in a File and determine the mental capacity of that Party for that purpose.
- 25.04 Where a Party does not have mental capacity to make decisions about the issues arising in a File, the IPC may require that Party to have a litigation guardian in order for the File to proceed.
- 25.05 The IPC may appoint a litigation guardian for a Party who does not have mental capacity to make decisions about the issues arising in a File where the proposed litigation guardian provides the IPC with a declaration confirming:
- a) the litigation guardian’s consent to serve in this role;
 - b) the nature of the litigation guardian’s relationship to the Party who does not have mental capacity;
 - c) the reasons for believing that the Party does not have mental capacity;
 - d) the nature and extent of the disability causing the Party to not have mental capacity;
 - e) that no other person has authority to be the Party’s litigation guardian with respect to the File;

- f) that any person who holds power of attorney or guardianship for the Party for other matters has been provided with a copy of the materials in the File and a copy of this section of this Code;
- g) that the litigation guardian has no interest that conflicts with the interests of the Party to be represented;
- h) an undertaking to act in accordance with the responsibilities of a litigation guardian as set out in section 25.07 of this Code; and
- i) that the litigation guardian is at least 16 years of age and understands the nature of the File.

25.06 The IPC may refuse to appoint, or may remove, a litigation guardian for a Party on its own initiative or at the request of any person because:

- a) the litigation guardian has an interest that conflicts with the interests of the Party;
- b) the appointment conflicts with the substitute decision-making authority of another person;
- c) the Party has mental capacity to make decisions about the issues arising in the File;
- d) the litigation guardian is unable or unwilling to continue in this role;
- e) a more appropriate person seeks to be litigation guardian; or
- f) no litigation guardian is needed to conduct the File.

25.07 A litigation guardian appointed pursuant to this section shall diligently attend to the interests of the Party who does not have mental capacity to make decisions about the issues arising in a File, and shall take all steps necessary for the protection of those interests, including:

- a) to the extent possible, informing and consulting with the Party who does not have mental capacity;
- b) considering the impact of the File on the Party who does not have mental capacity;
- c) deciding whether to retain a representative and providing instructions to the representative; and
- d) assisting in gathering evidence to support the File and putting forward the best possible Representations to the IPC.

25.08 No one may be compensated for serving as a litigation guardian for a File unless provided for by law or a pre-existing agreement.

26 USE OF REVIEW POWERS

- 26.01 Despite any other section of this Code, the IPC may commence a Review at any stage of its processes where it has reasonable grounds to do so and where it reasonably requires the use of its statutory powers in a Review (including its power to compel evidence under oath pursuant to section 60(12) of the Act) to fairly and adequately dispose of the issues in a File.
- 26.02 Where a Review has been commenced prior to the Adjudication Stage, and the File is subsequently streamed to the Adjudication Stage, the Adjudicator may dispose of the File and issue a Decision, which may include an Order.

27 RECONSIDERATION

- 27.01 The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:
- a) there is a fundamental defect in the adjudication process;
 - b) there is some other jurisdictional defect in the Decision;
 - c) there is a clerical error, accidental error or omission or other similar error in the Decision; or
 - d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.
- 27.02 A reconsideration request shall be made in writing to the individual at the IPC who made the Decision in question. The request must be received by the IPC:
- a) where the Decision specifies that an action or actions must be taken within a particular time period or periods, before the first specified date or time period has passed; or
 - b) where the Decision does not require any action within any specified time period or periods, within 21 days after the date of the Decision.
- 27.03 A reconsideration request should include all relevant information in support of the request, including:
- a) the relevant Decision and/or File number;
 - b) the reasons why the person is making the reconsideration request;
 - c) the reasons why the request fits within the grounds for reconsideration listed in section 27.01 of this Code;
 - d) the desired outcome; and

- e) a request for a stay, if necessary.
- 27.04 A reconsideration request does not automatically stay any provision of an Order. An Order must be complied with within the specified time period unless the IPC or a court directs otherwise.
- 27.05 A reconsideration request does not preclude a person from seeking other legal remedies that may be available.
- 27.06 The individual who made the Decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request.
- 27.07 Before deciding whether to reconsider a Decision, the IPC may notify and invite Representations from the Parties and from any other persons as appropriate.
- 27.08 Where the IPC decides to grant or decline a reconsideration request, the IPC will issue a Decision and send a copy to the Parties. The IPC may also provide a copy of the Decision to any other persons as appropriate.
- 27.09 Where the IPC decides to grant a reconsideration request, the IPC may rescind or vary the Decision or may make a further Decision.

28 WITHDRAWN, "ON HOLD," OR ABANDONED COMPLAINTS

- 28.01 A Complaint may be withdrawn at any stage of the IPC's processes, in which case the File will be closed.
- 28.02 Where a Complaint raising broader issues of public importance is withdrawn, the IPC may commence an IPC-Initiated File to address the issues raised in the withdrawn Complaint, and the Complainant in the withdrawn Complaint may be treated as an Affected Person in the IPC-Initiated File.
- 28.03 The IPC may place a Complaint "on hold" for later re-activation at the request of a Party, or on its own initiative. The IPC may take a File "off hold" at any time and without seeking Representations from any Party.
- 28.04 Where a Complainant has not responded within 21 days to attempts by the IPC to contact him or her in writing or by telephone, the IPC may decide to treat the Complaint as abandoned, in which case the IPC will notify the Parties in writing that the Complaint is closed.

29 REQUESTS TO VARY PROCEDURES

- 29.01 The IPC may waive or vary any of the procedures prescribed by or under this Code, including any requirement or time period specified in any written communication from the IPC, if it is of the opinion that it

would be advisable to do so in order to secure the just and expeditious determination of the issues.

- 29.02 A Party who wishes the IPC to waive or vary any of the procedures prescribed by or under this Code shall submit a request for such variance in writing to the IPC.
- 29.03 A request to vary the IPC's procedures should include all relevant information in support of the request, including:
- a) the relevant File number;
 - b) the reasons why the Party is making the request to vary the procedures;
 - c) the reasons why the Party will suffer prejudice if the request is not granted; and
 - d) the reasons why the prejudice under paragraph (c) outweighs any prejudice to the other Party(ies) to the File.
- 29.04 Before deciding whether to vary the IPC's procedures, the IPC may notify and invite Representations from the other Party(ies).
- 29.05 Where the IPC decides to grant or decline a request to vary its procedures, the IPC will notify the Parties in writing of its Decision.

30 CONSTITUTIONAL QUESTIONS

- 30.01 In this section, "constitutional question" means that:
- a) the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act, or of a rule of common law is in question; or
 - b) a remedy is claimed under section 24 (1) of the Canadian Charter of Rights and Freedoms in relation to an act or omission of the Government of Canada or the Government of Ontario.
- 30.02 A Party raising a constitutional question in a File shall notify the IPC and the Attorneys General of Canada and Ontario of the question as soon as the circumstances requiring this notice become known.
- 30.03 The IPC may at any time notify a Party that in its opinion the File raises a constitutional question. A Party receiving this notice shall within the time period specified by the IPC either:
- a) notify the IPC and the Attorneys General of Canada and Ontario of the question; or
 - b) provide the IPC with Representations as to why the Party believes notice of a constitutional question is not necessary.

- 30.04 Before deciding whether a File raises a constitutional question, the IPC may notify and invite representations from the Parties.
- 30.05 If a Party objects to providing notice of a constitutional question, the IPC may:
- a) decide that it is not necessary for the Party to provide notice of a constitutional question; or
 - b) require the Party to provide notice of a constitutional question as directed.

31 ABUSE OF PROCESS/VEXATIOUS LITIGANTS

- 31.01 The IPC may make such Decisions or give such directions in a File as it considers proper to prevent abuse of its processes.
- 31.02 Where the IPC finds that a Complainant has persistently instituted vexatious Complaints or conducted Complaints in a vexatious manner, the IPC may find that Complainant to be a vexatious litigant. Where a Complainant is found to be a vexatious litigant, the IPC may, at any stage of the IPC's processes, close Complaints made by that Complainant as an abuse of process, and/or require that Complainant to obtain permission from the IPC to make further Complaints or take further steps in Complaints, subject to any conditions imposed by the IPC.

Code of Procedure
for Matters under the
*Personal Health
Information Protection
Act, 2004*



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

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