
Access and Correction Complaints

Personal Health Information Protection Act



Information and Privacy Commissioner,
Ontario, Canada

December 2004

Introduction

Under the *Personal Health Information Protection Act* (the *Act*), you have a general right of access to a record of personal health information about yourself that is in the custody or under the control of a health information custodian (such as a doctor or a hospital).

In response to a written request for access, a custodian is required to either grant the request, and provide access, or deny access based on a set of exemptions set out in the *Act*.

If you are granted access to your personal health information, you also have a right to ask the custodian to correct any information you feel is inaccurate or incomplete.

What should I do if I am not satisfied with the outcome of my request for access to or correction of personal health information?

You have the right to file a complaint with the Information and Privacy Commissioner of Ontario (IPC).

When can I complain to the IPC about access or correction?

The grounds under which you may file an access or correction complaint to the IPC include situations where:

- you feel that you have incorrectly been denied access to your personal health information;
- the custodian has refused to make a requested correction to your personal health information;

- more than 30 days has passed since you made a request for access or correction, and you have not received a decision; or
- the custodian has sent you an estimate of fees that you think is excessive.

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 access/correction complaint form that is available from the IPC's website: <http://www.ipc.on.ca/docs/accfrm-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.

Along with this form, you should attach a copy of the decision letter from the custodian, a copy of your original request (if available), and any other relevant documentation.

Is there a cost associated with filing a complaint?

No, there is no cost to file an access or correction complaint.

How long do I have to submit my complaint?

You are required to submit your complaint within *six months* from the time when the custodian refused or was deemed to have refused your request.

What is a deemed refusal?

If a custodian does not respond to your request for access or correction within the time frame set out in the *Act* (normally 30 days), the custodian is deemed to have refused your request.

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.

In some cases, an *intake analyst* may make an order resolving the complaint, such as where a custodian is deemed to have refused an access request.

For all other matters, the *intake analyst* can either dismiss the complaint (for example, if the matter is outside the IPC's jurisdiction) or refer the complaint to the next stage in the complaint process.

Assuming my complaint proceeds, what happens next?

You will receive written confirmation outlining the process that the *registrar* has decided is most appropriate for your situation.

Because the IPC attempts to resolve as many matters as possible through informal means, most access or correction files will be streamed to mediation. However, in some cases, access or correction complaints will be forwarded directly to adjudication.

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 clarify the matters at issue in your complaint.

Mediation can also 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 in an access or correction matter, 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, including copies of all relevant correspondence, and a description of the information at issue.

If mediation is unsuccessful, what happens next?

Our experience has been that mediation is often successful in resolving most matters that come to the attention of the IPC. However, in the event that your complaint cannot be fully settled, you will receive a *mediator's* report that summarizes what has happened regarding your complaint to date, and identifies all of the issues that have yet to be resolved. After you have had a chance to review and comment on this report, the file is forwarded to adjudication.

What happens in Adjudication?

The file will be forwarded to an *adjudicator*, who will conduct a review. A review commences when the *adjudicator* prepares a notice of review, which is sent to all the parties involved. Normally, the parties involved in an access or correction complaint will just be you and the custodian. In some instances, it is possible that the IPC will notify and involve other parties as well.

The notice of review sets out the issues that the *adjudicator* feels need to be resolved in order to dispose of the complaint.

What kind of review takes place?

Reviews are usually conducted in writing, and in most cases, all parties to the review are provided with an opportunity to submit written representations on all the issues raised in the notice of review.

Representations are your opportunity to express your position about the complaint, and your chance to explain why you disagree with the position taken by the custodian. The more specific your representations, the more useful they will be to the *adjudicator*. Representations must be received by the date stipulated in the notice of review.

Are the representations shared?

Each party's representations will be shared with the other parties to the complaint, unless there is an overriding confidentiality concern. When submitting your representations, you must indicate which, if any, portions of your representations you wish to be withheld, and the reasons for that request.

Are all parties required to submit representations?

In some cases, the *adjudicator* may decide that a complaint may be decided in favour of a given party without having received representations from that party. In such cases, the party will not be invited to submit representations.

How is the review 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. Where the *adjudicator* does not agree with the custodian's decision, some of the things that he or she may order include:

- the release of some, or all, of the records;
- the modification of a fee; or
- the correction of your personal health information.

All orders include reasons, and are sent by mail to you and any other parties to the complaint.

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 and amount of information requested, the types of exemptions claimed by the custodian, the particular process selected for your complaint, 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 de l'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: Health Information Protection Act

The Personal Health Information Protection Act and Your Privacy

A Guide to the Personal Health Information Protection Act

Collection, Use, Disclosure and Other Complaints

Your Health Information: Your Rights

For more information, call or write:

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