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# Making an Access Request

to a

## Police Service

*produced by the*

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## Introduction

The *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) applies to municipalities, local boards, agencies and commissions. This includes Police Services Boards and, therefore, to records held by the local Police Service.

The *Act* is an important law. It reflects a commitment on the part of all government bodies, including Police Services Boards, to open, transparent and accountable public administration and to the protection of privacy. The *Act* gives citizens the right of access to records held by a Police Service, including personal information about themselves. However, these rights are not absolute. The *Act* requires the Police Service to refuse access if the record is covered by a **mandatory** exemption claim (e.g., the personal information of other individuals), and permits the Police Service to claim **discretionary** exemptions in other circumstances (e.g., solicitor-client privilege, or law enforcement records). When deciding whether to claim a discretionary exemption, the Police Service must consider the particular circumstances of an individual request and determine whether the exemption claim is appropriate.

Details about the operation of the *Act* and interpretations of the 10 exemption provisions can be found at the website of the Office of the Information and Privacy Commissioner (the IPC) <[www.ipc.on.ca](http://www.ipc.on.ca)>.

## Purpose of this Brochure

This brochure was created to assist individuals who are considering whether to request records from a Police Service under the *Act*. It includes a checklist of questions intended to help you decide whether to use the *Act* or some other method of obtaining the records, and to formulate your request in a way that is clearly understood so that it can be processed efficiently by the Police Service.

Requesters who frequently approach Police Services with access requests include:

- lawyers
- insurance companies
- people who have played a role in incidents where a Police Service has been involved (e.g., victims or witnesses to a crime, accused persons)
- relatives of individuals who died in circumstances which included the involvement of a Police Service

Records typically sought by these requesters include:

- occurrence reports
- investigation reports
- witness statements
- Crown briefs or police briefs
- motor vehicle accident reconstruction reports

## Checklist

The following checklist contains some questions that should be considered in deciding whether to make an access request under the *Act*.

**Should I use the *Act* or would an alternative source be better?**

1. If I can obtain the records elsewhere, does that preclude me from making a request under the *Act*.

No. The *Act* (section 51) does not impose any limitations on information which is available through other means by a party to litigation. This includes civil discovery rules, a subpoena or court order, or access rights available under the *Coroner's Act*.

2. Is it easier for me to use one of these other methods?

It depends. In some cases, alternate methods could be faster and more comprehensive and perhaps less costly. The *Act* has a mandatory fee structure to cover search, preparation and copying charges. It also includes a 30-day period for responding to requests, which sometimes presents problems. The *Act* also compels the Police Service to deny access to personal information if disclosure would constitute an unjustified invasion of someone else's privacy.

3. If that's the case, why would I want to use the *Act*?

If the 30-day response period does not present a problem, then the statutory obligation to meet the time standard set out in the *Act* may be beneficial.

The *Act* also establishes an access request and appeal scheme that is self-driven, user-friendly and does not require a lawyer to act as a representative. Rights of access can be determined at low cost, with a summary appeal to the IPC, where disputes are resolved more quickly than in many formal court processes. The Commissioner also has authority to review and amend fee charges and to order disclosure of records.

- Do the records I'm looking for contain the personal information of people other than me or my client?**

If so, the Police Service is required by law to claim the *mandatory* personal information exemption under section 14 of the *Act*, and can only disclose the records if one of the exceptions provided by that section apply.

The most commonly used exception is *consent*. Have you considered obtaining the consent informally? If consent is not likely to be given, do you feel one of the other exceptions in section 14 could apply? Or it is more likely that the mandatory nature of the exemption claim will prevent you from obtaining access?

- Do the records I'm looking for contain my own personal information and nobody else's?**

If so, the Police Service must provide you with access unless the records qualify for exemption. The *Act* contains a number of exemptions, including some that deal with law enforcement situations (section 8). Have you looked at these provisions? If so, would any of them likely apply?

If an exemption does apply, the Police Service would still need to weigh your right of access to your own personal information against its need to utilize a discretionary exemption claim in the circumstances. This process is commonly referred to as a balancing of interests. Do you think this balancing exercise would likely weigh in your favour given the particular circumstances you are dealing with?

- Do the records I'm looking for contain my own personal information and also someone else's personal information?**

If so, the Police Service must weigh your right of access to your own personal information against the other person's right to privacy. Do you think this balancing exercise would weigh in your favour given the particular circumstances you are dealing with?

- Do the records I'm looking for contain the personal information of someone who has died?**

Has the deceased individual been dead for less than 30 years? If so, the *Act* states that all of the privacy rights this person had while alive continue to apply.

Do you or your client need access to a deceased person's information in order to deal with an estate matter? If so, the *Act* (section 54) gives you the right to step into the shoes of the deceased person. However, these rights are limited and specific and only apply if:

- you can prove that you are the executor or administrator of the deceased's estate; and
- that you need access to the information for the purpose of estate administration.

**Do the records pertain to an ongoing law enforcement investigation or matter?**

If so, the Police Service may decide to claim the *discretionary* law enforcement exemption claim under section 8 of the *Act*. However, if the investigation has been completed, this exemption claim may no longer be applicable.

Are you or your client involved in an ongoing police investigation? If so, you might want to consider other methods of obtaining these records.

The IPC has been dealing with these and other issues since the municipal *Act* came into force in 1991. The IPC website <[www.ipc.on.ca](http://www.ipc.on.ca)> contains all orders issued since then, as well as orders issued under the provincial statute, which are often relevant and applicable to Police Services. These orders are fully searchable, and the IPC website also includes a helpful subject index which can point you to frequently considered issues.

***Brochures available from the Information and Privacy Commissioner include:***

*Access to Information under Ontario's Information and Privacy Acts*

*Your Privacy and Ontario's Information and Privacy Commissioner*

*The Appeal Process 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*

These and other IPC publications can be accessed at <[www.ipc.on.ca](http://www.ipc.on.ca)>.