



# WHAT TO EXPECT DURING A REVIEW WITH THE IPC

## A Guide for Public Bodies

This resource outlines best practices for public bodies/trustees when the IPC undertakes a review under:

- *Part VII of The Freedom of Information and Protection of Privacy Act (FOIP);*
- *Part VI of The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP);*
- *Part VI of The Health Information Protection Act (HIPA).*



## I. Key Terms

The following are key terms used throughout this guide. See also IPC's [Dictionary](#) for information on common terms and phrases used in the administration of FOIP, LA FOIP and HIPA in Saskatchewan.

Term	Meaning
<b>Applicant</b>	Individual who initiates a review of a public body's/trustee's decision.
<b>Calendar Days</b>	Includes weekends and all holidays; the first day is not counted (see section 24 of <i>The Interpretation Act, 1995</i> ).
<b>Head</b>	<p>The individual accountable by law for making the final decision on access requests, but may delegate these powers to someone else in the organization. This is typically the Minister of a ministry, the mayor of a municipality and the CEO of a local authority or Crown corporation.</p> <ul style="list-style-type: none"> <li>• For purposes of FOIP, includes the member of the Executive Council responsible for the administration of the agency (i.e. Minister, President/CEO) (see subsection 2(e) of FOIP and section 4 of FOIP Regulations).</li> <li>• For purposes of LA FOIP, includes the mayor, reeve or chairman of the local advisory committee or the chairperson of the governing body or the individual designated as the head by the governing body of the local authority (see subsection 2(e) of LA FOIP).</li> <li>• For purposes of HIPA, it is the trustee as defined by section 58 of HIPA. This includes the head or designate of a government institution where a trustee is a government institution as defined by FOIP, or the head or designate of a local authority where a trustee is a local authority as defined by LA FOIP.</li> </ul>
<b>Public Body</b>	Throughout this document, public body refers to the government institution or local authority identified under FOIP or LA FOIP (respectively).
<b>Review</b>	<p>The process triggered by an applicant or a third party of a decision made by a government institution, local authority or trustee of the following reviewable issues:</p> <ul style="list-style-type: none"> <li>• Reviewable issues pursuant to section 49 of FOIP or 38 LA FOIP can include, among other things, a review of late responses, decisions regarding extension of time to respond, refusal to provide access, fee estimates, requests to waive a fee, transfer of an access to information request, refusal to grant access to or to make a correction to personal information.</li> <li>• Reviewable issues pursuant to section 42 of HIPA can include a review of decisions regarding denial of access to one's own personal health information, denial of an</li> </ul>



	amendment to personal health information, or for any other matter the person feels has been a contravention of HIPA.
<b>Section 7 Response</b>	Means the letter, notice or email provided by the head of a public body to an applicant pursuant to section 7 of FOIP and LA FOIP.
<b>Section 36 Response</b>	Means the letter, notice or email provided by the trustee pursuant to section 36 of HIPA.
<b>Submission</b>	As applicable, depending on the party, the submission may include the public body's/trustee's written representation setting out its position along with its arguments or analysis, the index of records, the records in question and other supporting documentation. Notifications provided to the parties by the IPC outline what issues parties are expected to address in its submission in order to meet the burden of proof.
<b>Third Party</b>	Pursuant to subsection 2(1)(j) of FOIP, a person, including an unincorporated entity, other than an applicant or a government institution; under subsection 2(k) of LA FOIP a person, including an unincorporated entity, other than an applicant or a local authority. A third party may request a review or provide representation in the course of a review in certain circumstances.
<b>Trustee</b>	Is a trustee pursuant to subsection 2(t) of HIPA with custody or control of personal health information.

## II. Roles within the IPC

<p><b>Commissioner</b> (the Information and Privacy Commissioner is appointed pursuant to section 38 of FOIP)</p> <ul style="list-style-type: none"> <li>Executive Assistant (to the Commissioner)</li> </ul>	
<p><b>Corporate Services</b> (Intake, Early Resolution and Notification)</p> <ul style="list-style-type: none"> <li>Executive Director of Corporate Services</li> <li>Manager of Communication</li> <li>Manager of Administration</li> <li>Intake Officer (IO)</li> </ul>	<p><b>Compliance</b> (Review, Analysis and Report)</p> <ul style="list-style-type: none"> <li>Executive Director of Compliance (EDoC)</li> <li>Manager of Compliance (MoC)</li> <li>Analyst</li> </ul>



## III. Intake, Early Resolution and Notification

### Intake and Early Resolution

1. IOs receive requests for review, and are initially assigned the file.
2. IOs attempt early resolution, if it is a possibility. Early resolution is a process that may expedite resolution for the Applicant, and may reduce the amount of work a public body or trustee needs to do.
3. To facilitate a possible early resolution of a review, the IO:
  - clarifies the role of the IPC in a review and discusses possible outcomes;
  - ensures as many records as possible have been provided to the Applicant;
  - clarifies the scope and which records the Applicant seeks; and/or
  - clarifies the Applicant's objectives with the public body or trustee.
4. If early resolution is successful, the file is closed without a report. In most cases, early resolution is reached with the cooperation of both parties.
5. If early resolution between parties is not possible, IOs send notification of a review to all parties – applicants/complainants, public bodies/trustees and third parties (see Notification).
6. Note that if a public body/trustee releases new responsive records to an applicant, they should advise the IPC regardless of the stage of the review process.
7. If a public body **claims a third-party-exemption** (section 19 of FOIP or section 18 of LA FOIP), the third party has a right to make representation to the IPC regarding the records that engage their interests. In this case, the IO will ask the public body for the third party's contact information and also ask the public body to notify the third party of the review pursuant to subsection 52(1) of FOIP or subsection 41(1) of LA FOIP, as detailed in item 10. Once the third party contact information has been received, the IO will prepare and send notification letters to all parties.

### Notification

8. IOs send the notification (usually by email) to all parties (i.e. applicant, public body/trustee and any known third parties) once early resolution efforts cease. At this stage, the IO assigns the file to an Analyst, who then becomes the point of contact for all parties.
9. For reviews requested pursuant to section 49 of FOIP and section 38 of LA FOIP, the materials public bodies are required to provide may differ. For example, a review of the refusal to grant access to records will require the public body to provide the analyst with both a clean (non-severed) and a severed copy of the record in question. If a review is only about a public body's search efforts, a copy



of the record is not typically required. The notification will advise what the public body is required to provide the Analyst at the time of notification, but later the Analyst may ask for additional information or materials. For guidance on what may be required by the IPC in the different types of reviews, including tests that can be applied, see [Chapter 3](#) and [Chapter 4](#) in the *Guide to FOIP*, and [Chapter 3](#) and [Chapter 4](#) in the *Guide to LA FOIP*. See also [Using Affidavits in a Review with the IPC](#) for information on when it may be appropriate to use an affidavit in a review, and what the IPC requires in an affidavit.

10. If a public body **has refused to give access to records pursuant to section 19 of FOIP or section 18 of LA FOIP**, the public body must provide written notice to the third party (section 52 of FOIP and section 41 of LA FOIP). This notice is independent of any previous notices provided throughout the access to information and/or request for review process. When this is the case and a review is underway, the public body needs to provide the third party's contact information to the IPC, so the IPC may contact the third party directly and invite them to make representation.
11. Reviews requested pursuant to section 42 of HIPA more frequently involve access denied, but can involve an investigation of any potential contravention of HIPA. A submission includes the trustee's arguments and applicable materials (e.g. copy of records). The notification will advise what the trustee is required to provide the Analyst at the time of notification, but later the Analyst may request additional information or materials. For further information, see the [IPC Guide to HIPA](#).

## Preliminary Objections

12. **If a public body/trustee believes the Commissioner does not have jurisdiction to deal with a request for review**, it should advise the Analyst, in writing, as soon as possible after the notification has been provided. The public body/trustee needs to indicate how it concluded the Commissioner does not have jurisdiction, citing applicable legislation and providing arguments.
13. **If the public body/trustee believes the Commissioner should discontinue a review pursuant to section 50 of FOIP, section 39 of LA FOIP, or section 43 of HIPA**, it should advise the Analyst as soon as possible after notification has been provided, **and provide its argument and evidence to support its position**.

If such an objection has been newly raised (i.e. the applicant is not aware), the Analyst will share these objections with the applicant. The Analyst may ask the public body's/trustee's permission to share the public body's/trustee's summary of objections with the applicant, or the Analyst may provide their own summary of the objections to the applicant. The Analyst will not share a public body's or trustee's written submission or summary without the public body's/trustee's permission, but the Analyst is required to advise applicants of newly raised objections so that applicants may provide their own submission or rebuttal.



14. Note that informal resolution can occur at any stage of the review process, with the Analyst facilitating the outcome. There are a number of ways an informal resolution can be achieved. For example, if a public body agrees to share its submission with the applicant, the applicant may be satisfied with the public body's/trustee's arguments or reasons for denying access, etc., as outlined in the submission. At other times, informal resolution may be achieved by the public body/trustee agreeing to remove some of the exemptions and severance on a record on which it is relying, or releasing further records. Informal resolutions are desirable because they generally have a positive outcome for all involved, and may require less time and work. Informal resolutions are usually achieved with the cooperation of both parties. When informal resolution is achieved, the Commissioner does not typically issue a report, but may depending on the circumstances.

## IV. Review, Analysis and Draft Report

1. Once the IO assigns a file to an Analyst, the Analyst becomes responsible for ensuring the public body/trustee provides what is required (submission, materials, etc.) within the 30 day timeframe. If the public body/trustee does not provide what is requested within the 30 day timeframe, the following may occur as per **IPC's escalation policy**:
  - i. If a public body/trustee requests an extension, the Analyst will advise the public body/trustee of the extension period that is granted. Generally, extensions should not exceed 30 additional calendar days. The Analyst takes into consideration the public body's/trustee's reasons for the delay.
  - ii. If the Analyst is unable to engage the public body/trustee on meeting the timeframe granted, the Analyst discusses the matter with the MoC. The MoC will provide further direction to the Analyst regarding the submission, or may contact the public body/trustee to discuss and request the submission be provided within 7 calendar days or within a reasonable time period.
  - iii. If the MoC contacts the public body/trustee and does not receive a response or the submission within the extended deadline, the MoC refers the matter to the EDoC and Commissioner, who may then contact the head or trustee directly.
2. Once the Analyst receives the submission, they:
  - a. review the submission for completeness and missing documentation or records and follow up with the public body/trustee as required. For more on communicating with the Analyst regarding information required and evidence, see PART 8 of IPC's *The Rules of Procedure*;
  - b. share the Index of Records with the applicant; and
  - c. if the public body/trustee provides permission, the Analyst shares the submission with the applicant. If the public body does not mention in its submission that the submission may be shared, the Analyst may ask the public body if it can be shared. The Analyst **does not** share a submission with an applicant without the public body's or trustee's permission. To eliminate



doubt, public bodies/trustees may consider clearly marking submissions as “Submissions Can be Shared” or “Submissions Cannot be Shared”.

3. The Analyst undertakes their analysis and drafts the review or investigation report. Once the draft is ready, the Analyst reviews it with the MoC, EDoC and Commissioner. The Commissioner typically asks Analysts to send draft reports to the public body/trustee to review for factual errors (see [Reviews for Factual Errors in a Draft Report](#)). This is not an opportunity to provide further representation or introduce new issues. Public bodies have 7 days to review a draft report for factual errors, after which the IPC proceeds to issue its final report.

## V. Final Report

1. The Commissioner issues a final review or investigation report for every review file that is not informally resolved. Analysts send final copies of reviews to parties as follows:
  - public body/trustee (typically in care of the Access and Privacy Coordinator or designate);
  - applicant or complainant;
  - Deputy Minister of Justice and Executive Director of the Access and Privacy Branch Ministry of Justice;
  - where there are third parties, to the known third parties; and
  - any other individual the Commissioner identifies, or as per the IPC's [The Rules of Procedure](#).
2. The IPC usually publishes final review or investigation reports within 3 days of issuing them on IPC's website [home page](#) under *What's New*, and on the IPC's website [Reports](#) section. Depending on the circumstances of the review, the Commissioner may post a final report to IPC's website the same day it is issued.
3. **Public bodies and trustees must respond, in writing, to final reports within 30 calendar days to the IPC and the applicant. The date of the report is the date issued, and the 30 calendar days the Head has to respond to the final report is from that date.** The IPC may send one reminder to a public body or trustee of their obligation to provide its response before the 30 days elapses as a courtesy, but public bodies/trustees are responsible for ensuring that they keep track of their obligations with respect to timelines and responses.
4. Six months after issuing a final report, the IPC deletes copies of records provided by the public body or the trustee unless an appeal is pending. In the event of an appeal, the IPC deletes copies of the records after the appeal is concluded.



## VI. Helpful Information

### Preparing the Record

1. In most cases, there is no need to send the IPC records that have already been released in full to an applicant. Depending on the circumstances, the Analyst may require them; in that event, the Analyst will ask the public body/trustee to provide them.
2. The IPC requires a copy of records containing information that has been withheld from the applicant, in full or in part (note the IPC does not share or release records provided by public bodies/trustees to applicants or any other party). When preparing the record:
  - a. outline or highlight (“redline”) the withheld portions of information; and
  - b. clearly indicate next to the highlighted/redlined portions which exemptions are being applied to those portions of information (see IPC’s webinar on [severing](#)) and consider assigning a different sequential redaction number to each line item/paragraph severed.
3. Number all pages in a record sequentially (“pagination”). Ensure the index of records can be cross-referenced to the records.
4. If a public body/trustee determines that a record, or information in a record, is not responsive to an access to information request, the public body/trustee may consider releasing that information or record subject to any exemptions that are found to apply. If a public body determines information or records should be withheld as not responsive, it needs to indicate this in its section 7/36 response to the applicant. The response should include reasons as to why the information is being withheld as not responsive (e.g. it is unrelated to the access to information request because the information or record falls outside the timeframe set by the applicant in their access to information request). For further information, see [Chapter 3](#) in the *Guide to FOIP*, or [Chapter 3](#) in the *Guide to LA FOIP*.

### Preparing the Index of Records

1. Prepare an index of records (index) in table format.
2. For the purposes of the IPC, the index can be descriptive, and should contain the following elements (see [Change of Practice - Index of Records](#) or **FORM A: Index of Records** in [The Rules of Procedure](#)):
  - page numbers/page ranges;
  - description of the records (e.g. letter, email, memo, handwritten note, etc.). Include dates, job titles and organization affiliation of those involved;
  - status, or if the record has been released in part/in full; and
  - exemptions applied to each portion of the record.





3. **Because the IPC shares the index with applicants, the public body/trustee may want to prepare a modified index that can be shared with the applicant.** The modified index must not contain confidential comments, personal information, or information that discloses the contents of the records. As the index is an opportunity for applicants to know the exact number and types of records involved in a review, a modified index still needs to include factors such as page numbers/page ranges, descriptions of records (can be brief), the status (released/not released) and the exemptions applied.
4. For email threads or strings that are difficult to capture (e.g. those that go back and forth for a period of time), public bodies/trustees may consider using date ranges rather than each individual date.
5. Where emails have attachments, **a public body should list and identify them**, and describe them in the Index of Records.
6. Although there usually is not a need for a public body/trustee to provide the IPC with records that have been released to the applicant, it may still be helpful to note these records on the index.

## Preparing a Submission

A submission informs the Commissioner of the public body's/trustee's main arguments and presents supporting information in order to make its case with respect to its position. For information on preparing a submission, see the following resources on IPC's website:

- [\*A Guide to Submissions\*](#) – helps public bodies/trustees in preparing a successful submission.
- [\*IPC Guide to FOIP\*](#) – a reference tool for the application of FOIP; it is designed to assist government institutions that are subject to FOIP.
- [\*IPC Guide to LA FOIP\*](#) – a reference tool for the application of LA FOIP; it is designed to assist local authorities that are subject to LA FOIP.
- [\*IPC Guide to HIPA\*](#) – a reference tool for the application of HIPA; it is designed to assist trustees that are subject to HIPA.
- [\*The Rules of Procedure\*](#) – sets out the rules of procedure for reviews of complaints under section 49 of FOIP, section 38 of LA FOIP and section 42 of HIPA.
- [\*Using Affidavits in a Review with the IPC\*](#) – how to prepare a statement under oath that public bodies/trustees can use to support their case. See also FORM B: Affidavit of Records pages 37 & 38 of [\*The Rules of Procedure\*](#).

**Note:** the IPC has available a secure file transfer that can manage large files. Public bodies or trustees can ask the IO or Analyst for a link to the secure file transfer, through which the public body or trustee may directly forward its documentation.



## Contact Information

If you have any questions or concerns during any stage of the review process, please contact us:

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