

APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST OR REQUEST FOR CORRECTION

A Guide for Public Bodies and Applicants

This resource will explain what a public body or applicant needs to know about disregarding applications and requests pursuant to section 45.1 of The Freedom of Information and Protection of Privacy Act (FOIP) and section 43.1 of The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP).

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Office of the
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and Privacy Commissioner

APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST OR REQUEST FOR CORRECTION

In 2017, the Saskatchewan Legislative Assembly passed amendments to *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). These amendments were in force January 1, 2018. One of the changes to these Acts gives a government institution or local authority (public body) the ability to apply to the Information and Privacy Commissioner (the Commissioner) to disregard an application made pursuant to section 6 of FOIP/ LA FOIP (access to information request) or a request for a correction to personal information made pursuant to subsection 32(1) of FOIP/31(1) of LA FOIP (request for correction).

An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information in a particular case. It is important for a public body to remember that an application to disregard must present a sound basis for considerations. A public body must submit the application to disregard in writing and provide any supporting facts, evidence, and arguments to support its case. The process will also require that the public body provide a copy of its application to disregard to the applicant so that the applicant has an opportunity to respond.

This resource will explain the procedure when a public body makes an application to disregard an access to information request or a request for correction.

An application to disregard only applies to access to information and correction requests and not privacy breach complaints.

Access to Information Request: is a request for a record made to a public body pursuant to section 6 of FOIP/LA FOIP. FOIP and LA FOIP refer to it as an 'application'.

Applicant: an individual who made an application (access to information request) pursuant to section 6 of FOIP/LAFOIP or request for correction pursuant to subsection 32(1) of FOIP/31(1) of LA FOIP.

Application to Disregard: is an application made by a public body to the Commissioner to disregard an access to information request or request for correction pursuant to section 45.1 of FOIP/43.1 of LA FOIP.

Public Body: is, for the purpose of this resource, a government institution or a local authority.

Request for Correction: is a request for a correction to personal information to a public body pursuant to subsection 32(1) of FOIP/31(1) of LA FOIP.

Request for Review: is a request to the Commissioner to evaluate a public body's decision. A "review" is the process by which the Commissioner evaluates this decision.



WHAT IS AN APPLICATION TO DISREGARD?

The 2017 amendments to FOIP and LA FOIP allow a public body to ask the Commissioner for approval to disregard an access to information request or request for correction. The result would be that a public body would not have to reply to the applicant's access to information request, request for correction or a group of such requests.

Similarly the public body can apply to the Commissioner to disregard a request for a correction to personal information.

The Commissioner would then consider whether the access to information request or the request for correction:

- would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the access to information request or the request for correction;
- would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the access to information request or the request for correction; or
- is frivolous or vexatious, not in good faith or concerns a trivial matter.

See sections 45.1 of FOIP/ 43.1 of LA FOIP.

Grant an application to disregard: the Commissioner agrees that an access to information request or request for correction should be disregarded.

Refuse an application to disregard: the Commissioner disagrees that an access to information request or request for correction should be disregarded.

WHY IS THERE A SEPARATE IPC PROCEDURE FOR APPLICATIONS TO DISREGARD?

The IPC has adopted a new procedure to consider disregards which is different from a usual review process. The separate procedure was developed for the following reasons:

- **An application to disregard delays any potential access:** A public body must make an application to disregard within the 30 day period set out by subsection 7(2) of FOIP/LA FOIP or subsection 32(2) of FOIP/31(2) of LA FOIP in which the public body must respond to the applicant's application or request. When a public body makes an application to disregard, this 30 day clock stops. (See subsection 45.1(3) of FOIP/43.1(3) of LA FOIP.) The disregard process will delay the applicant from potentially getting access to records for the duration of the process. As such, the IPC will expedite any applications to disregard requests received in the office. Our goal is to complete an application to disregard file within 20 days.



Public Bodies should note that:

- The IPC strongly advises that a public body make an application to disregard within 10 days of receiving an access to information or correction request. This ensures there is enough time to process the request if the application to disregard is refused.
- An application for a disregard will not be accepted by the IPC if it is received 30 days after a public body has received an application (access request) or request for correction to personal information.
- If the Commissioner refuses an application for a disregard, the clock resumes. For example, if the public body applied for the application to disregard 10 days after receiving the access request or request for correction and the Commissioner refuses the application, the public body only has 20 days to respond to the access request. (Subsection 45.1(5) of FOIP/43.1(5) of LA FOIP.)
- As part of its plan to expedite the application disregard process, the IPC will not share a copy of its draft decision with the public body as it does during reviews.
- **There is no opportunity to appeal:** Subsection 45.1(4) of FOIP/43.1(4) of LA FOIP indicates that if the Commissioner grants an application to disregard, the application or the request “is deemed to not have been made”. In other words, it is like it never existed. Therefore, the applicant does not have the ability to appeal to the Court.

The public body must share its application to disregard with the applicant. This will be the only opportunity the applicant has to understand and respond to the public body’s reasons for making an application to disregard.

HOW DOES A PUBLIC BODY MAKE AN APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST OR REQUEST FOR CORRECTION?

To make an application for a disregard, a public body should send its application directly to the Director of Compliance at the IPC and the applicant. The application to disregard should consist of:

- **a copy of the date stamped access to information request(s) or request(s) for correction that the public body wishes to disregard;**
- **contact information for the applicant;**
- **specific subsections relied on (subsection 45.1(2)(a), (b), or (c) of FOIP/ 43.1(2)(a), (b), or (c) of LA FOIP);**
- **reasons as to why the Commissioner should grant the application to disregard;**
- copies of previous access to information requests or correction requests, if relevant;
- copies of letters or emails between the person making the access to information request and the public body, if relevant;
- copies of any other documents the head considers relevant; and
- **confirmation that the applicant was provided a copy of the application to disregard.**



Items in bold indicates that it is mandatory. The 30 day clock will not stop for the public body until these items are received by the IPC. The Director of Compliance will contact the public body as soon as possible to explain what is needed in order to proceed.

The *IPC Guide to Exemptions* provides the tests and factors that a public body should address when it is providing its reasons as to why the Commissioner should grant the application to disregard.

The public body will not be given another opportunity to provide information about the disregard unless the IPC asks for further information or clarification.

As noted, the public body must provide a copy of its entire application to disregard to the applicant.

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WHAT ARE THE STEPS FOR AN APPLICATION TO DISREGARD?

The following steps will occur when an application to disregard is made:

1. The public body receives an access to information request pursuant to section 6 of FOIP/LA FOIP or a request to correct personal information pursuant to subsection 32(1) of FOIP/31(1) of LA FOIP. **Note:** the 30 days in which a public body must respond to the applicant pursuant to subsections 7 or 32(2) of FOIP/7 or 31(2) of LA FOIP begins now.
2. The public body tries to clarify and narrow the scope with the applicant. See IPC resource, *Understanding the Duty to Assist*.
3. The public body makes an application for a disregard to the Director of Compliance at the IPC and provides a copy of the entire application to disregard to the applicant.
 - a. It is strongly encouraged that the public body makes the application to disregard within 10 days of receiving the access to information request or request for a correction of personal information from the applicant.
 - b. An application to disregard will not be accepted if it is made 30 days or more after the public body receives the access to information request or request for a correction of personal information from the applicant.
 - c. The public body's application to disregard should contain the items discussed above. The 30 day clock will not stop for the public body until all items necessary to proceed are received by the IPC.
4. The IPC reviews the application to disregard and ensures it has all the items required to proceed. An analyst is assigned. The analyst contacts the applicant and the public body to ensure the duty to assist was met and to ensure the applicant has received a copy of the application to disregard.



5. The analyst provides notification to the public body and the applicant of the Commissioner's intention to consider the public body's application to disregard. The applicant is asked to provide a submission, or response to the public body's application to disregard, within 10 days.
6. The IPC expedites analysis for application to disregard files.
7. The Commissioner issues his decision with reasons for his decision and a statement as to whether the application to disregard has been granted or not. It is sent to the public body and the applicant. **Note:** Public bodies will not receive a copy of the Commissioner's draft decision.
8. Once the public body receives the Commissioner's decision:
 - a. If the Commissioner has granted the application to disregard, the public body provides a response to the applicant stating that the request has been disregarded pursuant to section 45.1 of FOIP/43.1 of LA FOIP. (See subsection 7(2)(g) of FOIP/LAFOIP or subsections 32(1) and (2) of FOIP/31(1) and (2) of LA FOIP.) Our office suggests that a local authority refund the applicant's application fee because the access to information request is deemed to not have been made.
 - b. If the Commissioner has refused the disregard, the 30 day clock resumes and the public body must continue processing the access to information or correction requests as per statutory obligations. (See section 7 of FOIP/LA FOIP or 32(2) of FOIP/31 (2) of LA FOIP.)
9. The public body does not have to respond to the Commissioner's decision as it does for a Review or Investigation Report.
10. The Commissioner's decision is posted on the IPC website 3-5 days after it has been sent to the public body and the applicant.

QUESTIONS?

If you have questions about applications to disregard, please contact:

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