



Office of the
Saskatchewan Information
and Privacy Commissioner

THE RULES OF PROCEDURE v.23

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This document sets out The Rules of Procedure for reviews of complaints under section 49 of *The Freedom of Information and Protection of Privacy Act* (FOIP), section 38 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), section 42 of *The Health Information Protection Act* (HIPA) and investigations under the Acts.

These procedures are established pursuant to section 45 of FOIP which provides as follows:

General powers of commissioner

45 The commissioner may:

...

(d) determine the procedure to be followed in the exercise of the powers or performance of any duties of the commissioner pursuant to this Act; and

...

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PART 1: NAME AND DEFINITIONS

What this Part is about: This Part contains definitions of words and phrases that appear in the rules.

Name

1-1 These rules may be cited as the Rules of Procedure.

Words in Acts or Regulations

1-2 Words used in these rules have the same meaning that they have under the Acts or Regulations under those Acts and the following definitions are intended to clarify meanings of words as used in these rules.

Definitions

1-3 In these rules:

“access to information request” means a request for information under the acts submitted to a public body either on paper or electronically;

“Acts” means *The Freedom of Information and Protection of Privacy Act (FOIP)*, *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* and *The Health Information Protection Act (HIPA)*;

“applicant” means an applicant as defined by FOIP who is making an access to information request or a request for correction.

“commissioner’s office” means a staff person employed by the commissioner and delegated to carry out certain duties of the commissioner;

“complainant” means an individual who has made a complaint regarding a breach that involves his or her personal information or personal health information under FOIP, LA FOIP or HIPA; and sometimes referred to as an affected individual;

“days” means calendar days;

“FOIP” means *The Freedom of Information and Protection of Privacy Act*;

“HIPA” means *The Health Information Protection Act*;

“LA FOIP” means *The Local Authority Freedom of Information and Protection of Privacy Act*;

“office” means the office of the Information and Privacy Commissioner at 503-1801 Hamilton Street, Regina Saskatchewan.

“public body” means a government institution, Minister’s office, MLA’s office, local authority or a trustee involved in an investigation or a review;

“record” “record” means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

“representation” means the documents, other evidence and/or arguments by a provided party to the Commissioner’s office setting out its position with respect to a review or investigation and sometimes referred to as a submission;

“request for correction” means a request by the individual for correction of his or her personal information or personal health information.

“request for review” means a request made pursuant to section 49 of FOIP section 38 of LA FOIP or section 42 of HIPA;

“section 7 response” means the letter, notice or email provided by the head pursuant to section 7 of FOIP or LA FOIP or section 36 of HIPA;

“real risk of significant harm” includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

Other words

1-4 Other words used in these rules have the same meaning that they have under the Acts or Regulations under those Acts.

PART 2: PROCEDURE ON REVIEWS

What this Part is about: This Part outlines the procedure that the commissioner's office will follow and require public bodies to follow when carrying out a request for a review under the Acts.

Part 2: Procedure on Reviews

Request for review

2-1 A request for a review may be made in the prescribed form and may be filed with the office by email, regular mail, fax or personal delivery.

Early resolution

2-2 Before commencing a review, the commissioner's office may attempt to resolve the matter by entering into discussions with the applicant and the public body.

Notice of review

2-3 After the commissioner's office determines that a matter cannot otherwise be resolved and that a review will be undertaken, the commissioner's office will prepare, a notice indicating that a review will be undertaken. Notices will be forwarded electronically or by other means to the public body, the applicant, and any third party the commissioner's office is aware of.

Contents of notice of review

2-4(1) The notice of review will be prepared in accordance with the Act and may include a request for the following:

- an index of records;
- the records at issue provided to the applicant in the same unaltered form as provided to the applicant with the addition of a document number or page number;
- the records at issue responsive to the access to information request with no redactions and the document number or page number;
- a written representation (submission) outlining the public body's position, exemptions claimed, if any, and the reasons for claiming those exemptions or for relying on positions taken by the public body regarding any issue under the Act including searches, possession or control, paramountcy, fees, waiver of fees, time extensions, transfers, or corrections;
- contact information for third parties affected by the review;

- any other information required as determined by the commissioner's office needed to carry out the review.

(2) The notice of review will indicate that all of the items referred to in subsection (1) are to be provided within 14 days after the notice is sent.

(3) The notice of review will indicate that the public body must in its representation indicate all the exemptions the public body is relying upon. Discretionary exemptions not included in a public body's representation may not be considered by the commissioner.

Parties to a review

2-5(1) The parties entitled to receive notice include the persons requesting a review, the public body to which the access to information request or request for correction was made, and any third party that the commissioner's office is aware of.

(2) If during the review the commissioner's office determines there are other third parties, the commissioner's office will provide a copy of the notice of review to those third parties and will invite those third parties to make a representation (submission) within 14 days if contact information is available.

(3) From time to time, the commissioner's office may identify a government institution, local authority, trustee or other organization that may have an interest or concern regarding the records in question, and the commissioner's office may request representations from any of those parties.

Index of records

2-6(1) The index of records provided by the public body shall include the following information:

- a document number or page number assigned by the public body;
- a brief description of the record such as a letter, email, memo, note, agreement indicating who it was from, who it was to and the date;
- the number of pages in the record;
- the section or subsection numbers of the exemptions claimed for that record;
- the status of the record, whether released to the applicant in part, full or withheld in full.

(2) The Commissioner's office will provide a copy of the index of records to the applicant immediately upon receipt.

Contents of a representation (submission)

2-7(1) A representation (submission) should have the following for each exemption relied on:

1. List the exemptions that has been applied by section, subsection, clause and sub-clause;
2. List the record number, page numbers and where applicable paragraphs, sentences, line or words that it applies to (group pages if the records are similar);
3. Reproduce the test from the *IPC Guide to Exemptions* for that exemption;
4. Present arguments for each part of the test and link the argument to the information in the record; and
5. Provide any further materials necessary to support its position (i.e. affidavits, contracts, screen shots).

or provide reason or justifications for the position taken by the public body regarding the issue in question under the Acts including searches, possession or control, paramountcy, fees, waiver of fees, time extensions, transfers or corrections.

(2) Applicants, third parties and public bodies are encouraged in their representations to follow the tests and principles set out in the *IPC Guide to Exemptions* and to cite relevant court cases and decisions of other commissioner's across Canada.

(3) A representation shall not be disclosed to another party unless the party submitting the representation agrees that the representation or a portion thereof, can be shared with another party.

(4) The commissioner may quote from the representation (submission) in the final report.

Records

2-8 The records will be provided to the commissioner's office either in electronic or paper form, with a document number or page number that corresponds to the number given that document in the index of records.

Non-responsive record

2-9 Within records, any portions of the record considered non-responsive to the access to information request shall be provided to the commissioner's office if at issue in the review.

Analysis of the information provided

2-10 After 14 days or any further time agreed to by the commissioner's office, the commissioner's office will continue its analysis of the information or materials provided to it. If any information, referred to in subsection 2-4, is missing or clarification is needed, the commissioner's office will make one request for that information from the applicant, public body or third party and then continue with its analysis.

Additional information

2-11(1) If the commissioner's office determines it requires additional information to do its analysis, it will request that information from the public body or any other organization it considers appropriate.

(2) In order to avoid delay, the commissioner's office will request the information within a specific timeline.

A draft report

2-12(1) After all information and material have been gathered and an analysis done, the commissioner's office shall prepare a draft report and send it to the public body and any other party the commissioner deems appropriate .

(2) The public body shall have seven days or any further time agreed to by the commissioner's office to provide input regarding factual errors in the draft report and whether the public body plans to follow the recommendations.

(3) Because the public body has had ample opportunity to indicate which exemptions are being relied upon, no further exemptions will be considered by the commissioner's office unless an exemption is mandatory or unique circumstances exist as to why the exemptions were not claimed earlier in the process.

(4) Because the public body has had ample opportunity to make representations on the exemptions relied upon, no additional arguments on the exemptions claimed in the representation (submission) will be considered unless the draft report has raised an approach or principle not contained in the notice of review, the *IPC Guide to Exemptions* or unique circumstances exist as to why the additional arguments should be considered.

Final report

2-13(1) After the seven days or any further time agreed to by the commissioner's office, the commissioner's office will proceed to prepare and issue the final report, including, if deemed necessary by the commissioner, any factual corrections, public body comments, and revisions to the recommendations.

(2) The final report will be sent to:

- The applicant; the head or the head's designate (if known) of the public body and the FOIP coordinator;
- any affected third parties;
- the Deputy Minister of Justice;
- where the report discloses a possible offense, the Director of Public Prosecutions;
- where the report involves HIPA, the Deputy Minister of Health;
- where the report involves a city, town, or village, the Deputy Minister of Government Relations and CEO of the Saskatchewan Urban

Municipalities Association; where the report involves a board or commission of a city, town or village, the Mayor of the city, town or village, the Deputy Minister of Government Relations and the Saskatchewan Urban Municipalities Association;

- where a report involves the municipality, the Deputy Minister of Government Relations and the Executive Director of the Saskatchewan Association of Rural Municipalities;
- where the report involves a board or commission of a municipality, the Reeve of the municipality, the Deputy Minister of Government Relations and the Executive Director of the Saskatchewan Rural Municipalities Association;
- where the report involves information technology of the government of Saskatchewan, the Deputy Minister of Central Services;
- where the report involves information technology related to personal health information, the president of eHealth and the CEO of the Saskatchewan Health Authority;
- where the report involves an affiliate or organization that provides services to the Saskatchewan Health Authority, the Deputy Minister of Health and the CEO of the Saskatchewan Health Authority;
- where the report involves the managing or archiving of official records, the provincial archivist;
- where the report involves a board of education, the Deputy Minister of Education, and the Executive Director of the Saskatchewan School Boards Association; where the report involves a University, College, Regional College or Saskatchewan Polytechnic, the Deputy Minister of Advanced Education;
- where the report involves a health professional, the CEO of the association to which the health professional belongs;
- where a report involves a police force, the President of the Saskatchewan Association of Chiefs of Police; and
- any other public body or organization the commissioner's office considers appropriate.

Report will be posted

2-14 Unless the commissioner directs otherwise, three to five days after the final report is sent to the parties, the report will be:

- forwarded to CanLII;
- forwarded to the Saskatchewan Legislative Library;
- posted on the commissioner's office web site; and
- forwarded to the commissioner's across Canada.

Public body to indicate decision

2-15 The Acts require the head of the public body to indicate to the applicant and the commissioner's office, his or her decision on the recommendations in the final report within 30 days. If the head fails to advise the commissioner's office within 30

days, the commissioner will consider that there is no response to the report and will so state in the commissioner's Annual Report.

Commissioner's office shall destroy the record

2-16 The commissioner's office shall destroy the record which the public body has provided to the commissioner's office, six months after the report was sent, unless:

- (a) the commissioner's office finds the matter has proceeded to the Court of Queen's Bench and in that case, shall not destroy the record until the matter is no longer in the courts or
- (b) the commissioner's office determines there are unique circumstances that justify the record being retained.

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PART 3: PROCEDURE ON BREACH INVESTIGATION

What this Part is about: This Part outlines the procedure that the commissioner's office will follow and require public bodies to follow when carrying out an investigation under the Acts.

Part 3: Procedure on Breach Investigation

Complaint of breach of privacy

3-1(1) The commissioner's office may become aware of a possible privacy breach in several different ways including:

- A public body proactively reporting a breach to the commissioner's office.
- An individual complaining to the commissioner's office about a public body's actions or practices.
- A third party in possession of personal information or personal health information notifying the commissioner's office.
- Employees of a public body informing the commissioner's office of inappropriate practices within the organization.
- The commissioner's office becoming aware of media reports of a potential privacy breach or inappropriate privacy practices.

and upon becoming aware, the commissioner's office may begin an investigation.

(2) If an complainant makes a complaint of a possible privacy breach, it must be made in writing and may be filed with the commissioner's office by email, regular mail, fax or personal delivery.

(3) If a complainant has not yet given the public body opportunity to respond to the matter, the commissioner's office may refer the complainant to the public body before proceeding with an investigation.

(4) If a public body reports a breach to the commissioner's office under any of the Acts, the commissioner's office may monitor the matter and only proceed with an investigation of that breach as outlined in this Part.

Preliminary Inquiries

3-2 Before commencing an investigation, the commissioner's office may make inquiries to determine whether there are grounds to investigate the possible privacy breach.

Notice of investigation

3-3 After the commissioner's office determines that there are grounds to investigate, the commissioner's office will prepare and send to the public body, complainant, and any other affected individual (if known), a notice of investigation indicating that an investigation will be undertaken.

Contents of notice of investigation

3-4(1) The notice of investigation will be prepared in accordance with the Act and may include a request for the following:

- the steps taken to stop the breach;
- the steps taken to contain the breach (i.e. retrieve the data improperly disclosed);
- the steps taken to notify affected individuals that their information was improperly collected, used or disclosed;
- details of the investigations carried out to determine the root cause of the breach;
- steps that will be taken to help prevent a similar breach from occurring in the future;
- copies of all investigation reports done by employees of the public body or by independent investigators; and
- any other materials requested by the commissioner's office.

(2) The notice of investigation will indicate that all of the items referred to in subsection (1) are to be provided within 14 days of receipt of the notice.

Interested persons in an investigation

3-5 Interested persons in an investigation include the public body involved, the complainant, other persons affected by the breach, and the person or entity who is accused of the alleged breach.

Investigation of the complaint and alleged breach

3-6(1) The commissioner's office will continue its investigation of the complaint. If any information is missing or clarification is needed, the commissioner's office will make one request for that information from the public body and then continue with its investigation. The commissioner's office will determine whether to request the missing information from the public body or another organization.

(2) In order to avoid delay, the commissioner's office will request the information within a specific timeline.

(3) If during the investigation, the commissioner's office determines there are other interested persons, the commissioner's office may provide a copy of the notice of investigation to those interested persons and may request those interested persons to provide information within 14 days.

When investigating a complaint of a breach

3-7 When investigating a complaint of a possible privacy breach, the commissioner's office will, among other things, review whether the public body ought to have issued a notification of breach and whether there, under the circumstances, was a real risk of significant harm.

Steps taken by public body

3-8 When the commissioner's office determines that there has been a privacy breach, the commissioner's office will analyze whether the public body took the following steps in responding to the privacy breach:

- Contain the breach,
- Notify affected individuals,
- Investigate the breach,
- Prevent future breaches, and
- Write a privacy breach report.

Contents of breach notification

3-9 When the commissioner's office determines there has been a privacy breach, the commissioner's office will, in addition to other things, review the notice of breach sent to the complainant and other individuals and determine whether it contains the following:

- A description of what happened,
- A detailed description of the personal information or personal health information that was involved,
- A description of possible types of harm that may come to them as a result of the privacy breach,
- Steps that the individuals can take to mitigate harm,
- Steps the organization is taking to prevent similar privacy breaches in the future,
- The contact information of an individual within the organization who can answer questions and provide further information,
- A notice that individuals have a right to complain to the Office of the Information and Privacy Commissioner,
- The contact information of the Office of the Information and Privacy Commissioner,
- Recognition of the impacts of the breach on affected individuals and an apology.

A draft report

3-10(1) After all information and materials have been gathered and an analysis done, the commissioner's office may prepare and send a draft report to the public body and any other party the commissioner deems appropriate.

(2) The public body shall have seven days to provide input regarding factual errors in the report unless the time is extended by the commissioner's office.

Final report

3-11(1) After the seven days or any other further time agreed to by the commissioner's office, the commissioner's office will proceed to prepare and issue the final report, including, if deemed necessary by the commissioner, any factual corrections, the public body comments, and revisions to the recommendations.

(2) The final report will be sent to:

- the complainant;
- the head or the head's designate (if known) of the public body and the FOIP coordinator;
- any persons affected by the breach, if known;
- where the commissioner directs, the person or entity who is accused of the alleged breach;
- the Deputy Minister of Justice;
- where the report discloses a possible offense, the Director of Public Prosecutions;
- where the report involves HIPA, the Deputy Minister of Health;
- where the report involves a city, town, or village, the Deputy Minister of Government Relations and the CEO of the Saskatchewan Urban Municipalities Association;
- where the report involves a board or commission of a city, town or village, the Mayor of the city, town or village, the Deputy Minister of Government Relations and the Saskatchewan Urban Municipalities Association;
- where a report involves a municipality, the Deputy Minister of Government Relations and the Executive Director of the Saskatchewan Association of Rural Municipalities;
- where the report involves a board or commission of a municipality, the Reeve of the municipality, the Deputy Minister of Government Relations and the Executive Director of the Saskatchewan Rural Municipalities Association;
- where the report involves information technology of the government of Saskatchewan, the Deputy Minister of Central Services;
- where the report involves information technology related to personal health information, the president of eHealth and the CEO of the Saskatchewan Health Authority;

- where the report involves an affiliate or organization that provides services to the Saskatchewan Health Authority, the Deputy Minister of Health and the CEO of the Saskatchewan Health Authority;
- where the report involves the managing or archiving of official records, the provincial archivist;
- where the report involves a board of education, the Deputy Minister of Education, and the Executive Director of the Saskatchewan School Boards Association;
- where the report involves a University, College, Regional College or Saskatchewan Polytechnic, the Deputy Minister of Advanced Education;
- where the report involves a health professional, the CEO of the association to which the health professional belongs;
- where a report involves a police force, the President of the Saskatchewan Association of Chiefs of Police; and
- any other public body or organization the commissioner's office considers appropriate.

Report will be posted

3-12 Unless the commissioner directs otherwise, three to five days after the final report is sent to the parties, unless the commissioner directs otherwise, the report will be:

- forwarded to CanLII;
- forwarded to the Saskatchewan Legislative Library;
- posted on the commissioner's office web site; and
- forwarded to the commissioner's across Canada.

Head to indicate decision

3-13 The Acts require the head of the public body to indicate to the complainant and the commissioner's office, his or her decision on the recommendations of the report within 30 days. If the head fails to advise the commissioner's office within 30 days, the commissioner will consider that there is no response to the report and will so state in the commissioner's Annual Report.

PART 4: INFORMATION AND EVIDENCE

What this Part is about: This Part sets out some basic requirements for communicating with the Commissioner's office and the providing of information and evidence.

Part 4 Information and Evidence

Commissioner's office will communicate with the parties or interested persons

4-1 The commissioner's office may communicate with the parties by mail, email, telephone or fax. Unless impractical parties shall communicate personal information or personal health information by means of encrypted transmissions or other means where the information is protected.

Providing information or documents

4-2 Unless required by the commissioner, parties may provide information or documents to the commissioner's office without it being under oath or affirmation.

Proving information in the form of an affidavit or declaration

4-3 The commissioner where the circumstances warrant, can require the applicant, complainant, public body, third party or any other person to provide the information or documents in the form of an affidavit or declaration.

Refusal to provide information or documents

4-4 Where a person or organization refuses to provide information or documents, under oath or otherwise, the commissioner may issue a Notice to Produce Documents or summon a person to attend at the office and give evidence under oath or affirmation and produce documents related to the review or investigation.

Commissioner's office will make inquiries

4-5 In any review or investigation, the commissioner's office may make inquiries of any person or organization it considers necessary to do a complete and accurate analysis.

PART 5: APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST OR A REQUEST FOR CORRECTION

What this Part is about: This Part sets out the procedure for a public body in applying to disregard an access to information request or a request for correction.

Part 5: Application to Disregard an Access to Information Request or a Request for Correction

Head applies to disregard an access to information request or a request for correction

5-1 (1) When a head applies to the commissioner's office to disregard an access to information request or a request for correction pursuant to section 45.1 of FOIP or 43.1 of LA FOIP, the head shall apply to the commissioner and provide information outlined in section 5-2 as soon as reasonably practical but preferably within 10 days of receiving the request.

(2) Where the circumstances require, the commissioner may request the head to provide the information by an affidavit or declaration.

Head to provide information

5-2 When a head of a public body applies to disregard an access to information request or a request for correction, the head will provide the following information:

- 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 or 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 requests for correction, 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.

Head to provide copy

5-3 The head shall provide the application to disregard as outlined in subsection (1) to the applicant.

Parties to application to disregard

5-4 (1) The parties to the application to disregard are the public body and the applicant.

(2) The commissioner's office will not consider the application to disregard received by the commissioner's office 30 days after the date of the access to information request or request for correction, unless the commissioner's office is satisfied there are extraordinary circumstances as to why the application is late.

(3) The commissioner's office will notify the applicant that the public body has applied to the commissioner to disregard the access to information request or the request for correction and the applicant may respond to the commissioner's office within 10 days.

Commissioner's office will make inquiries

5-5 In an application to disregard, the commissioner's office will make inquiries of any person or organization it considers necessary to do a complete and accurate analysis.

Priority of application to disregard

5-6 The commissioner's office will give applications to disregard, priority in the office and all efforts will be taken to make inquiries, do the analysis and provide a decision within 20 days.

Form of commissioner's response

5-7 (1) The commissioner will issue a decision with reasons for his decision and a statement as to whether the application to disregard has been granted or refused.

(2) The decision of the commissioner will be sent to the head of the public body and the applicant.

Decision will be posted

5-8 Within three to five days after the decision is sent, unless the commissioner directs otherwise, the decision will be:

- forwarded to CanLII;
- forwarded to the Saskatchewan Legislative Library;
- posted on the commissioner's office website; and
- forwarded to the commissioner's across Canada.