

THE RULES OF PROCEDURE



Office of the
Saskatchewan Information
and Privacy Commissioner

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Introduction

This document sets out the Rules of Procedure for reviews /investigations (appeals) under sections 33 and 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), and sections 42 and 52 of [The Health Information Protection Act](#) (HIPA) under the Acts.

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

General powers of commissioner

45(2) 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

Part Headings

Part 1: Name and Definitions

Part 2: Procedure on Reviews Under FOIP/LA FOIP

Part 3: Procedure on Reviews Under HIPA

Part 4: Procedure on Proactively Reported Privacy Breaches Under FOIP/LA FOIP

Part 5: Procedure on Proactively Reported Privacy Breaches Under HIPA

Part 6: Procedure on Privacy Breach Investigations Under FOIP/LA FOIP

Part 7: Procedure on Privacy Breach Investigations Under HIPA

Part 8: Information and Evidence

Part 9: Solicitor-Client or Litigation Privilege

Part 10: Application to Disregard an Access to Information Request or a Request for Correction Under FOIP/LA FOIP

Forms

Part 1: Name and Definitions

This Part contains definitions of words and phrases that appear in the rules.

1-1 Name

These rules may be cited as the Rules of Procedure.

1-2 Words in Acts or Regulations

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

1-3 Definitions

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](#), [The Local Authority Freedom of Information and Protection of Privacy Act](#) and [The Health Information Protection Act](#) and their regulations;

“affected individual” means a person identified as having personal information or personal health information, being inappropriately collected used or disclosed in a privacy breach;

“applicant” means:

- i except in Parts 2 and 3, a person or organization who makes an access to information request or a request for correction or amendment
- ii in Part 2, a person or organization who requests a review pursuant to section 49 of FOIP or section 38 of LA FOIP and
- iii in Part 3, a person who requests a review pursuant to section 42 of HIPA.

“commissioner’s office” means the office of the Information and Privacy Commissioner and includes a staff person employed by the commissioner delegated to carry out certain duties of the commissioner.

“complainant” means an individual who has made a complaint alleging a privacy breach has occurred that involves the complainant’s personal information or personal health information under the Acts.

“days” means calendar days.

“FOIP” means [*The Freedom of Information and Protection of Privacy Act*](#);

“HIPA” means [*The Health Information Protection Act*](#);

“Investigation” means an investigation pursuant to sections 33 and 51 of FOIP, sections 32 and 40 of LA FOIP or section 52 of HIPA.

“LA FOIP” means [*The Local Authority Freedom of Information and Protection of Privacy Act*](#);

“public body” means a government institution, local authority or trustee involved in an investigation or a review;

“real risk of significant harm” may, among other things, include 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.

“record” means a record as defined in FOIP, LA FOIP or HIPA.

“representation” means the documents, other evidence and/statements or affidavits provided by a party to the commissioner’s office setting out its position with respect to a review or investigation and often 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;

“review” means a review pursuant to sections 49 to 55 of FOIP, sections 38 to 44 of LA FOIP or sections 42 to 48 of HIPA;

“section 7 decision” means the letter, notice or email provided by the head of a public body pursuant to section 7 of FOIP/LA FOIP;

“section 36 decision” means the letter, notice or email provided by the trustee pursuant to section 36 of HIPA;

“trustee” is a trustee, as defined by section 2(t) of HIPA.

Part 2: Procedure on Reviews Under FOIP and LA FOIP

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 FOIP and LA FOIP.

2-1 Request for Review

(1) A request for a review may be made in the prescribed form and may be filed with the commissioner's office by email, regular mail, courier or personal delivery.

(2) Once contact is made pursuant to subsection (1), the commissioner's office will advise the applicant of any additional information required to support a review and the applicant will have 30 days, unless the commissioner determines otherwise, to provide that additional information. If the information is not provided in that time, the review will not continue unless the commissioner determines there are unique circumstances.

2-2 Early Resolution

Before commencing a review, if a third party is involved, the commissioner's office will ask the public body for third party contact information and request that the public body immediately give notice of review to any affected third parties pursuant to section 52 of FOIP or section 41 of LA FOIP. Once all the parties are identified, the commissioner's office may attempt to resolve the matter by entering into discussions with the applicant, public body and any third party.

2-3 Notice of Review

After the commissioner's office determines that a matter cannot be resolved and the commissioner determines that a review will be undertaken of the head's decision under FOIP/LA FOIP, the commissioner's office will prepare a notice indicating that a review of the head's decision will be undertaken. Notices will be forwarded electronically or by other means to the public body, the applicant and any engaged third parties.

2-4 Contents of Notice of Review

(1) The notice of review will be prepared in accordance with FOIP/ LA FOIP and may include a request for the following:

(a) Records for which an exemption is claimed:

- An index of records (see Form A).

- The records at issue provided to the applicant in the same unaltered form as provided to the applicant with the addition of a sequential page number and if applicable, a severance number for each portion withheld. There is no need to provide the commissioner's office with records released in full.
- The records at issue responsive to the access to information request with no redactions and the record number or page number.

(b) A written representation (submission).

(c) Any other relevant information that the commissioner considers necessary for a full review.

(2) The notice of review will indicate that all of the items requested in the notice of review are to be provided within 30 days, unless the commissioner determines otherwise.

(3) The notice of review will indicate that the public body should in its representation (submission) address every exemption claimed in the head's decision. Discretionary exemptions, not included in the head's decision under FOIP/LAFOIP, will not be considered by the commissioner's office unless there are exceptional circumstances.

2-5 Request to Third Parties

At the time of sending out the notice of review to the public body, the commissioner's office will send a request to third parties, known to the commissioner's office, indicating they have a right to make representations to the commissioner's office provided the representation is received within 30 days after receipt of the notice or any further time directed by the commissioner's office.

2-6 Parties to a Review

(1) The parties entitled to receive notice include the persons requesting a review and the public body.

(2) If during the review, the commissioner's office determines there are other third parties, the commissioner's office will provide a notice of review to those third parties and will invite those third parties to make a representation within 30 days after receipt of the notice or any further time directed by the commissioner's office.

(3) From time to time, the commissioner's office may identify a public body 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.

2-7 Index of Records

(1) The index of records provided by the public body shall include but is not limited to the following information:

- Page number and sequential severance numbers.
- The section or subsection numbers of the exemptions claimed for that record.
- A general description of the record such as a letter, email, memo, note, agreement indicating who it was from, who it was sent to and the date.

A sample of the index of records is contained in Form A.

(2) The commissioner's office will not provide a copy of the index of records to the applicant unless the public body agrees to its release. The commissioner's office will ask the public body whether it wishes to share the index of records with other parties.

2-8 Contents of a Representation

(1) A representation should include but is not limited to the following for each exemption relied on in the head's decision or issue under review:

- (a) Refer to the exemptions that has been applied by section, subsection, clause and sub-clause.
- (b) List the record number, page numbers and redaction or severance numbers that the exemption applies to (group pages if the records are similar).
- (c) Refer to the applicable test(s) from the [Guide to FOIP](#) for that exemption.
- (d) Refer to the applicable test(s) from the [Guide to LA FOIP](#) for that exemption.
- (e) Provide positions for each part of the test and link these to the information in the record.
- (f) Provide any further materials necessary to support its position (i.e., affidavits, cases, reports, contracts, screen shots).
- (g) Provide reasons or justifications for the head's decision regarding the issue in question including records do not exist, searches, possession or control, fees, waiver of fees, time extensions, transfers, manner of access or correction decisions.

(2) Applicants, third parties and public bodies are encouraged in their representation to follow the tests, criteria and principles set out in the [Guide to FOIP](#) or [Guide to LA FOIP](#). In addition, cite relevant court cases and decisions from Saskatchewan or other commissioners or ombudsmen across Canada who are responsible for overseeing access and privacy legislation in other jurisdictions.

(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. The commissioner's office will ask parties whether they wish to share or exchange their representation with other parties.

(4) In accordance with section 46 of FOIP, the commissioner may quote short passages from the representation in his report.

2-9 Records

(1) The records will be provided to the commissioner's office either in electronic or paper form, paginated with page numbers and if applicable sequential severance numbers that corresponds to the number given to that record in the index of records and a severance number for each line item severed with exemptions applied clearly noted. If the copy of the record provided does not reveal the content severed, then a separate clean copy must also be provided. There is no need to provide the IPC with records released in full. If the record is illegible, the commissioner's office will ask for a copy that is legible or for a transcript of that record.

(2) If a public body provides a record using white page redactions, the commissioner's office will request that the record be provided using black-out or grey-out redactions.

2-10 Analysis of the Information Provided

After the times set out in the notice of review or any extension granted by the commissioner's office, the commissioner's office will continue its analysis of the information or materials provided to it. If any information, requested in the notice of review 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.

2-11 Preparing a Report

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

(2) In order to avoid delay, the commissioner's office will request the information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its analysis or exercise the commissioner's powers under section 54 of FOIP or 43 of LA FOIP.

(3) The commissioner's office will proceed to prepare and issue its report.

(4) The commissioner may from time to time, determine that a report will be issued in two parts and when so doing, will indicate in Part 1 of the report that the report is being issued in two parts. An example of this is where an issue of jurisdiction might be addressed in Part 1.

(5) The report will be sent to:

- The applicant; the head of the public body and the FOIP coordinator or designate(s).
- Any affected third parties.
- The Deputy Minister of Justice and Executive Director, Chief Access and Privacy Officer of Integrated Justice Services.
- Any other public body, organization or person the commissioner's office considers appropriate.

2-12 Report will be Posted

Unless the commissioner directs otherwise, seven days after the final report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.
- Forwarded to other commissioners or ombudsmen across Canada who are responsible for overseeing federal, provincial or territorial access or privacy legislation.

2-13 Public body to Indicate Decision

Pursuant to section 56 of FOIP and section 45 of LA FOIP, the head of the public body, within 30 days, shall indicate to the applicant and the commissioner's office, their decision on the recommendations in the commissioner's report. 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, in accordance with subsection 62(2) of FOIP and subsection 52(2) of LA FOIP.

2-14 Appeal to court

Pursuant to section 57 of FOIP or section 46 of LA FOIP, the applicant or the third party has the right to appeal the decision of the head to the Court of King's Bench and the applicant, third party, public body or local authority involved will be asked to advise the commissioner's office of any appeal.

2-15 Commissioner's Office Shall Destroy the Record

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:

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

Part 2.1: Priority Procedure on Reviews of Failure to Provide a Section 7 Decision

This Part outlines the procedure that the commissioner's office will follow and require public bodies and applicants to follow when carrying out a request for a review of a failure to issue a section 7 decision.

2.1-1 Request for Review of a Failure to Issue a Section 7 Decision Only

A request for a review of a single issue related to a failure of a public body to issue a section 7 decision within legislated timelines may be made in the prescribed form and may be filed with the commissioner's office by email, regular mail, courier or personal delivery.

2.1-2 Early Resolution

(1) Once it is confirmed that the section 7 decision was not provided within legislated timelines, the commissioner's office will attempt to resolve the matter by entering into discussions with the applicant and public body. Early resolution efforts will be initiated and completed within 14 days after which, if unsuccessful, the commissioner's office will move to the next step.

(2) If the public body within the 14 days provides proof that a section 7 decision has been provided to the applicant, the commissioner will consider discontinuing the review unless there are unique circumstances that would justify issuing a report.

2.1-3 Notice of Review

After the commissioner's office determines that a matter cannot be resolved and the commissioner determines 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 and the applicant.

2.1-4 Contents of Notice of Review

(1) The notice of review will be prepared in accordance with FOIP/ LA FOIP and may include a request for the following:

- (a) If it exists, a copy of the section 7 decision related to the access request.
- (b) An index of records.
- (c) The original record with redactions related to any exemptions claimed.
- (d) The original record referred to in the access request without redactions.

(e) A written representation (submission).

(f) Any other relevant information that the commissioner considers necessary for a full review.

(4) The notice of review will indicate that all of the items requested in the notice of review are to be provided within 30 days unless the commissioner determines otherwise.

(5) The notice of review will indicate that the public body should in its representation (submission) address the reasons why a section 7 decision has not been issued and more particularly why the decision was not issued within 30 days of receiving the access request. In addition, the public body should in its representation (submission) address every exemption claimed in the head's decision. Discretionary exemptions, not included in the head's decision under FOIP/LAFOIP, will not be considered by the commissioner's office unless there are exceptional circumstances.

2.1-5 Sharing a Representation

(5) The index of records and any representation shall not be disclosed to another party unless the party submitting the index of records or representation agrees that the representation or a portion thereof can be shared with another party. The commissioner's office will ask parties whether they wish to share or exchange their representation with other parties.

(6) In accordance with section 46 of FOIP, the commissioner may quote short passages from the representation in his report.

2.1-6 Analysis and Report

(1) After the times set out in the notice of review from the commissioner's office, the commissioner's office will continue its analysis of the information or materials provided to it.

(2) If the commissioner's office requests additional information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its analysis or exercise the commissioner's powers under section 54 of FOIP or section 43 of LA FOIP.

(3) The commissioner's office will proceed to prepare and issue its report.

(4) The report will be sent to:

- The applicant; the head of the public body and the FOIP coordinator or designate(s).
- The Deputy Minister of Justice and Executive Director, Chief Access and Privacy Officer of Integrated Justice Services.

- Any other public body, organization or person the commissioner's office considers appropriate.

2.1-7 Report will be Posted

Unless the commissioner directs otherwise, seven days after the final report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.

2.1-8 Public Body to Indicate Decision

Pursuant to section 56 of FOIP and section 45 of LA FOIP, the head of the public body, within 30 days, shall indicate to the applicant and the commissioner's office, their decision on the recommendations in the commissioner's report. 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, in accordance with subsection 62(2) of FOIP and subsection 52(2) of LA FOIP.

2.1-9 Appeal to Court

Pursuant to section 57 of FOIP or section 46 of LA FOIP, the applicant has the right to appeal the decision of the head to the Court of King's Bench and the applicant, public body or local authority involved will be asked to advise the commissioner's office of any appeal.

Part 2.2: Priority Procedure on Reviews of Fees and Fee Waivers Only

This Part outlines the procedure that the commissioner's office will follow and require public bodies and applicants to follow when carrying out a request for a review of fees or fee waivers.

2.2-1 Request for Review of Fees or Failure to Waive Fees Only

A request for a review of:

- (a) A complaint that fees are unreasonable; and/or
- (b) A failure to waive fees,

may be made in the prescribed form and may be filed with the commissioner's office by email, regular mail, courier or personal delivery.

2.2-2 Early Resolution

(1) The commissioner's office may attempt to resolve the matter by entering into discussions with the applicant and public body. It is expected that early resolution efforts will be initiated and completed within 14 days after which the commissioner's office will move to the next step.

(2) If the public body within the 14 days:

- (a) Adjusts the fee quoted which is accepted by the applicant; and/or**
- (b) Grants the fee waiver request,**

the commissioner will consider discontinuing the review unless there are unique circumstances that would justify issuing a report.

2.2-3 Notice of Review

After the commissioner's office determines that a matter cannot be resolved and the commissioner determines 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 and the applicant.

2.2-4 Contents of Notice of Review

(1) The notice of review will be prepared in accordance with FOIP/ LA FOIP and may include a request for the following:

- (a) A written representation (submission).

(b) Any other relevant information that the commissioner considers necessary for a full review.

(2) The notice of review will indicate that all of the items requested in the notice of review are to be provided within 30 days unless the commissioner determines otherwise.

(3) The notice of review will indicate that the public body should in its representation (submission) address:

(a) The reasons for and the approach taken in calculating the fees quoted for providing the records under the access request.

(b) The reasons for not granting the fee waiver.

2.2-5 Sharing a Representation

(1) 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. The commissioner's office will ask parties whether they wish to share or exchange their representation with other parties.

(2) In accordance with section 46 of FOIP, the commissioner may quote short passages from the representation in his report.

2.2-6 Analysis and Report

(1) After the times set out in the notice of review from the commissioner's office, the commissioner's office will continue its analysis of the information or materials provided to it.

(2) In order to avoid delay, the commissioner's office will request the information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its analysis or exercise the commissioner's powers under section 54 of FOIP or 43 of LA FOIP.

(3) The commissioner's office will proceed to prepare and issue its report.

(4) The report will be sent to:

- The applicant; the head of the public body and the FOIP coordinator or designate(s).
- The Deputy Minister of Justice and Executive Director, Chief Access and Privacy Officer of Integrated Justice Services.
- Any other public body, organization or person the commissioner's office considers appropriate.

2.2-7 Report will be Posted

Unless the commissioner directs otherwise, seven days after the final report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.

2.2-8 Public body to Indicate Decision

Pursuant to section 56 of FOIP and section 45 of LA FOIP, the head of the public body, within 30 days, shall indicate to the applicant and the commissioner's office, their decision on the recommendations in the commissioner's report. 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, in accordance with subsection 62(2) of FOIP and subsection 52(2) of LA FOIP.

2.2-9 Appeal to Court

Pursuant to section 57 of FOIP or section 46 of LA FOIP, the applicant has the right to appeal the decision of the head to the Court of King's Bench and the applicant, public body or local authority involved will be asked to advise the commissioner's office of any appeal.

Part 3: Procedure on Reviews Under HIPA

This Part outlines the procedure that the commissioner's office will follow and require trustees to follow when carrying out a request for a review under HIPA.

3-1 Request for Review

- (1) A request for a review may be made and filed with the commissioner's office by email, regular mail, courier or personal delivery.
- (2) Once contact is made pursuant to subsection (1), the commissioner's office will advise the applicant of any additional information required to support a review and the applicant will have 30 days, unless the commissioner determines otherwise, to provide that additional information. If the information is not provided in that time, the review will not continue unless the commissioner determines there are unique circumstances.

3-2 Early Resolution

Before commencing a review, the commissioner's office may attempt to resolve the matter by entering into discussions with the applicant, trustee and any third party.

3-3 Notice of Review

After the commissioner's office determines that a matter cannot be resolved and the commissioner determines that a review will be undertaken of the trustee's decision under HIPA, the commissioner's office will prepare a notice of review indicating that a review of the trustee's decision will be undertaken. Notices will be forwarded electronically or by other means to the trustee and the applicant.

3-4 Contents of Notice of Review

- (1) The notice of review will be prepared in accordance with HIPA and may include a request for the following:
 - (a) Records for which the trustee refuses to release:
 - An index of records (see Form A).
 - The records at issue provided to the applicant in the same unaltered form as provided to the applicant but paginated with the addition of page numbers and if applicable sequential severance numbers and exemptions applied to each visible. There is no need to provide the IPC with records released in full.
 - The records at issue responsive to the access to information request with no sequential severances paginated.

(b) A written representation (submission).

(c) Any other relevant information that the commissioner considers necessary for a full review.

(2) The notice of review will indicate that all the items requested are to be provided within 30 days, unless the commissioner determines otherwise.

(3) The notice of review will indicate that the trustee should in its representation (submission) address the issues raised in the trustee's decision.

3-5 Request for Representations

From time to time, the commissioner's office may identify a public body or other organization that may have an interest or concern regarding the records or issues in question, and the commissioner's office may request representations from any of those parties provided the representation is received within 30 days after receipt of the notice or any further time directed by the commissioner's office.

3-6 Index of Records

(1) The index of records provided by the trustee shall include, but is not limited to the following information:

- Page number and sequential severance numbers;
- The section or subsection numbers of the exemptions claimed for that record; and
- A general description of the record such as a letter, email, memo, note, agreement indicating who it was from, who it was sent to and the date.

A sample of the index of records is contained in Form A.

(2) The commissioner's office will not provide a copy of the index of records to the applicant unless the trustee agrees to its release. The commissioner's office will ask the trustee whether it wishes to share the index of records with other parties.

3-7 Contents of a Representation

(1) A representation should include but is not limited to the following for each reason relied on in the trustee's decision or issue under review:

- (a) List the page numbers and sequential severance numbers that the exemption applies to (group pages if the records are similar).
- (b) Refer to the test from the *Guide to HIPA*, where appropriate.
- (c) Provide positions for each reason to withhold and link the argument to the information in the record.

- (d) Provide any further materials necessary to support its position (i.e., affidavits, cases, reports, contracts, screen shots).
- (e) Provide reasons or justifications for the trustee's decision regarding the issue in question under HIPA including searches, custody or control, fees, time extensions, transfers or correction decisions.

(2) Applicants and trustees are encouraged in their representation to follow the tests, criteria and principles set out in the *Guide to HIPA*. In addition, cite relevant court cases and decisions of other commissioners or ombudsmen across Canada who are responsible for overseeing access and privacy legislation in other jurisdictions.

(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. The commissioner's office will ask parties whether they wish to share or exchange their representation with other parties.

(4) In accordance with section 54 of HIPA, the commissioner may quote short passages from the representation in his report.

3-8 Records

(1) The records will be provided to the commissioner's office either in electronic or paper form, paginated with sequential severance numbers that correspond to the number given to that record in the index of records. If the copy of the record provided does not reveal the content severed, then a separate clean copy must also be provided. There is no need to provide the commissioner's office with records released in full. If the record is illegible, the commissioner's office will ask for a copy that is legible or for a transcript of that record.

(2) If a trustee provides a record using white page redactions, the commissioner's office will request that the record be provided using black-out or grey-out redactions.

3-9 Analysis of the information provided

After the times set out in the notice of review or extended by the commissioner's office, the commissioner's office will continue its analysis of the information or materials provided to it. If any information, requested in the notice of review is missing or clarification is needed, the commissioner's office will make one request for that information from the applicant, trustee or other person and then continue with its analysis.

3-10 Preparing a Report

(1) If the commissioner's office determines it requires additional relevant information to do its analysis, it will request that information from the trustee or any other organization or individual it considers appropriate.

(2) In order to avoid delay, the commissioner's office will request the information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its analysis or exercise the commissioner's powers under section 46 of HIPA.

(3) The commissioner's office will proceed to prepare and issue its report.

(4) The commissioner may from time to time, determine that a report will be issued in two parts and when so doing, will indicate in Part 1 of the report that the report is being issued in two parts. An example of this is where an issue of jurisdiction might be addressed in Part 1.

(5) The report will be sent to:

- The applicant, the trustee and the trustee's designate(s) (if known).
- The Deputy Minister of Health.
- Where the report involves a health professional, the Chief Executive Officer of the association to which the health professional belongs and any other public body, organization or person the commissioner's office considers appropriate.

3-11 Report will be Posted

Unless the commissioner directs otherwise, seven days after the report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to [CanLII](#).
- Forwarded to the [Saskatchewan Legislative Library](#).
- Forwarded to other commissioners or ombudsmen across Canada who are responsible for overseeing federal, provincial or territorial access or privacy legislation.

3-12 Trustee to Indicate Decision

Pursuant to section 49 of HIPA, the trustee, within 30 days, shall indicate to the applicant and the commissioner's office, the trustee's decision on the recommendations in the report. If the trustee 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](#) in accordance with subsection 60(2) of HIPA.

3-13 Appeal to Court

Pursuant to section 50 of HIPA, the applicant has the right to appeal the decision of the head to the [Court of King's Bench](#) and the applicant and trustee will be asked to advise the commissioner's office of any appeal.

3-14 Commissioner's Office Shall Destroy the Record

The commissioner's office shall destroy the record, which the trustee 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 King'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.

Part 4: Procedure on Reported Privacy Breaches Under FOIP and LA FOIP

This Part outlines the procedure that the commissioner's office will follow and require public bodies, Minister's offices, or Members of the Legislative Assembly's (MLA) offices to follow when there is a reported privacy breach.

4-1 Reported Privacy Breaches

(1) A public body, Minister's office or MLA's office can report a privacy breach by completing the [Proactively Reported Breach of Privacy Reporting Form](#), or an equivalent document and delivering it to the commissioner's office by email, regular mail, courier or personal delivery.

(2) When a public body, Minister's office or MLA's office reports a privacy breach to the commissioner's office, the commissioner's office will open a case file.

4-2 Notice of Investigation

Upon the reporting of a privacy breach, the commissioner's office will send the public body, Minister's office or MLA's office a notification of the investigation including a [Privacy Breach Investigation Questionnaire](#) requesting that it be completed and returned to the commissioner's office within 30 days or such other date as determined by the commissioner.

4-3 When Investigating a Privacy Breach

When investigating a reported privacy breach, the commissioner's office will, among other things, determine whether the public body, Minister's office or MLA's office has or should issue a notice of a privacy breach under section 29.1 of FOIP or section 28.1 of LA FOIP to the affected individuals as soon as practical.

4-4 Steps Taken by the Public Body, Minister's Office or MLA's Office

While investigating a reported privacy breach, the commissioner's office will analyze whether the public body, Minister's office or MLA's office appropriately managed the breach and took the following steps in responding to the privacy breach:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Taken steps to prevent future breaches.

4-5 Privacy breach Notification and Questionnaire

When the commissioner's office investigates a reported privacy breach, the commissioner's office will review:

- (a) The notice of privacy breach sent to affected individuals and consider whether it contains the following:
 - A description of what happened, including the date, time, location and who was involved.
 - How the breach was contained.
 - A detailed description of the personal information that was involved.
 - If known, a description of possible types of harm that may come to them as a result of the privacy breach.
 - Steps that can be taken to mitigate harm.
 - Steps the public body, Minister's office or MLA's office is taking to prevent the occurrence of similar privacy breaches in the future.
 - The contact information of an individual within the public body, Minister's office or MLA's office who can answer questions and provide further information regarding the breach.
 - A reference to the fact that individuals have a right to complain to the commissioner's office.
 - The contact information of the commissioner's office.
 - Where appropriate, recognition of the impact of the privacy breach on affected individuals and an apology.
- (b) The [Privacy Breach Investigation Questionnaire](#) for public bodies and consider whether the public body has:
 - Contained the breach (as soon as possible).
 - Notified affected individuals (as soon as possible).
 - Investigated the breach.
 - Taken appropriate steps to prevent future breaches.

4-6 Closing of File Without Report

After investigating the reported privacy breach and the actions taken by the public body, Minister's office or MLA's office:

- (a) If the commissioner's office is satisfied with most of the steps taken, the file will be closed, and the commissioner may make recommendations for further steps to be taken.

(b) If the commissioner's office is satisfied with all of the steps taken, the file will be closed, and if applicable, with suggested recommendations to the public body, Minister's office or MLA's office.

(c) If the commissioner's office is not satisfied with the steps taken, a person has filed a complaint with the commissioner's office, a privacy breach is egregious, there is a systemic issue involved, there is significant educational value or where it involves a large number of affected individuals, the commissioner may direct that a report will be issued.

4-7 Issuing a Report

If the commissioner's office determines that a report will be issued, the process for issuing a report in Part 6 will be followed.

Part 5: Procedure on Reported Privacy Breaches Under HIPA

This Part outlines the procedure that the commissioner's office will follow and require trustees to follow when there is a reported privacy breach.

5-1 Reported Privacy Breaches

- (1) A trustee can report a privacy breach by completing the [Proactively Reported Breach of Privacy Reporting Form](#) or an equivalent document and delivering it to the commissioner's office, by email, regular mail, courier or personal delivery.
- (2) When a trustee reports a privacy breach to the commissioner's office, the commissioner's office will open a case file.

5-2 Notice of Investigation

Upon the reporting of a privacy breach, the commissioner's office will send the trustee a notification of the investigation including a [Privacy Breach Investigation Questionnaire](#) and requesting that it be completed and returned to the commissioner's office within 30 days or such other date as determined by the commissioner.

5-3 When Investigating a Privacy Breach

When investigating a reported privacy breach, the commissioner's office will, among other things, consider whether the trustee has or should issue a notice of a privacy breach to affected individuals as soon as practical.

5-4 Steps Taken by the Trustee

When the commissioner's office investigates a reported privacy breach, the commissioner's office will analyze whether the trustee appropriately managed the breach and took the following steps in responding to the privacy breach:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Taken appropriate steps to prevent future breaches

5-5 Privacy Breach Notification and Questionnaire

When the commissioner's office investigates a reported privacy breach, the commissioner's office will review:

(a) The notice of privacy breach sent to affected individuals and consider whether it contains the following:

- A description of what happened including the date, time, location and who was involved.
- A detailed description of the personal health information that was involved.
- If known, a description of possible types of harm that may come to them as a result of the privacy breach.
- Steps that can be taken to mitigate harm.
- Steps the trustee is taking to prevent the occurrence of similar privacy breaches in the future.
- The contact information of an individual within the trustee who can answer questions and provide further information regarding the breach.
- A reference to the fact that individuals have a right to complain to the commissioner's office.
- The contact information of the commissioner's office.
- Where appropriate, recognition of the impacts of the privacy breach on affected individuals and an apology.

(b) The [*Privacy Breach Investigation Questionnaire*](#) for trustees and consider whether the trustee has:

- Contained the breach (as soon as possible).
- Notified affected individuals (as soon as possible).
- Investigated the breach.
- Taken appropriate steps to prevent future breaches.

5-6 Closing of File Without a Report

After investigating the reported privacy breach and the actions taken by the trustee:

(a) If the commissioner's office is satisfied with most or all of the steps taken, the file will be closed, and if applicable, with suggested recommendations to the trustee.

(b) If the commissioner's office is not satisfied with the steps taken, a person has filed a complaint with the commissioner's office, a privacy breach is egregious, there is a systemic issue involved, there is significant educational value or where it involves a large number of affected individuals, the commissioner may direct that a report will be issued.

5-7 Issuing a Report

If the commissioner's office determines that a report will be issued, the process for issuing a report in Part 7 will be followed.

Part 6: Procedure on Privacy Breach Investigations Under FOIP and LA FOIP

This Part outlines the procedure that the commissioner's office will follow and require public bodies, Minister's office or MLA office to follow when carrying out an investigation of a possible breach.

6-1 Complaint of Breach of Privacy

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

- An individual complaining to the commissioner's office about a public body, Minister's office or MLA's office actions or practices;
- Another individual in possession of personal information notifying the commissioner's office;
- Employees of a public body, Minister's office or MLA's office 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 commence an investigation.

(2) A complainant can report a possible privacy breach by completing the [*Alleged Breach of Privacy Reporting form: for Affected Individuals/Complainants*](#) or an equivalent document and delivering it to the commissioner's office by email, regular mail, courier or personal delivery.

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

(4) Once contact is made pursuant to subsection (2), the commissioner's office will advise the complainant or third party of any additional information required to support an investigation and the complainant or third party will have 30 days, unless the commissioner determines otherwise, to provide that additional information. If the information is not provided in that time, the investigation will not continue unless the commissioner determines there are unique circumstances.

6-2 Preliminary Inquiries

Before commencing an investigation, the commissioner's office may make inquiries to determine jurisdiction and to establish if there are sufficient grounds to investigate the possible privacy breach.

6-3 Notice of Investigation

After the commissioner's office determines that there are grounds to investigate, the commissioner's office will prepare and send to the public body, Minister's office or MLA's office, complainant, and any other interested person, a notice of investigation indicating that an investigation will be undertaken.

6-4 Notice of Investigation and Questionnaire

(1) The notice of investigation will be prepared in accordance with FOIP/ LA FOIP and may include a request for the following:

- Completion of the [Privacy Breach Investigation Questionnaire](#) for public bodies.
- Any other relevant information that the commissioner considers necessary for a full investigation.

(2) The notice of investigation will indicate that all of the items requested in the notice of investigation are to be provided within 30 days after receipt of the notice or any further time directed by the commissioner's office.

6-5 Investigation of the Alleged Breach

(1) The commissioner's office will continue its investigation of the alleged breach. If any information is missing or clarification is needed, the commissioner's office will make one request for that information from the public body, Minister's office, MLA's office, complainant or third party and then continue with its investigation. The commissioner's office will determine whether to request the missing information from the public body, Minister's office or MLA's office or another organization.

(2) In order to avoid delay, the commissioner's office will request the information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its investigation and analysis.

(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 after receipt of the notice or any further time directed by the commissioner's office.

6-6 When Investigating a Complaint of a Privacy Breach

When investigating a complaint of a possible privacy breach, the commissioner's office will, among other things, confirm whether a privacy breach occurred or not.

6-7 Steps Taken by Public Body, Minister's Office or MLA's Office

When the commissioner's office determines that there has been a privacy breach, the commissioner's office will analyze whether the public body, Minister's office or MLA's office appropriately managed the breach and took the following steps in responding to the privacy breach:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Taken appropriate steps to prevent future breaches

6-8 Breach Notification and Questionnaire

When the commissioner's office determines there has been a privacy breach, the commissioner's office will, in addition to other things, review:

- (a) The notice of breach sent to the complainant and affected individuals and determine whether it contains the following:
 - A description of what happened, including date, time, location and individual involved.
 - A detailed description of the personal information that was involved.
 - If known, a description of possible types of harm that may come to them as a result of the privacy breach.
 - Steps that can be taken to mitigate harm.
 - Steps the organization is taking to prevent the occurrence of similar privacy breaches in the future.
 - The contact information of an individual within the organization who can answer questions and provide further information regarding the breach.
 - A reference to the fact that individuals have a right to complain to the commissioner's office.
 - The contact information of the commissioner's office.
 - Where appropriate, recognition of the impacts of the breach on affected individuals and an apology.
- (b) The [Privacy Breach Investigation Questionnaire](#) and consider whether the public body has:
 - Contained the breach (as soon as possible).
 - Notified affected individuals (as soon as possible).

- Investigated the breach.
- Taken steps to prevent future breaches.

6-9 Preparing a Report

(1) After all information and materials have been gathered and an analysis done, the commissioner's office will proceed to prepare and issue the report.

(2) The report will be sent to:

- The complainant.
- The head of the public body and the FOIP coordinator or designate(s), or where appropriate, the Minister's office, the MLA's office or third party.
- Where the commissioner directs, the person or entity who is accused of the alleged breach.
- The Deputy Minister of Justice and Executive Director, Chief Access and Privacy Officer of Integrated Justice Services.
- Any other public body, Minister's office or MLA's office, organization or person the commissioner's office considers appropriate.

6-10 Report will be Posted

(1) Unless the commissioner directs otherwise, seven days after the report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.
- Forwarded to other commissioners or ombudsmen across Canada who are responsible for overseeing federal, provincial or territorial access or privacy legislation.

(2) Unless the commissioner directs otherwise, the report posted to the commissioner's office website or forwarded according to subsection (1), will be edited so that the name of the person committing the breach will be changed to initials or otherwise de-identified.

(3) Alternatively, the commissioner will determine whether to name the person that committed the unauthorized breach in the report after taking the following into consideration:

- Does the complainant or affected individual need to know in order to protect themselves or take precautionary measures.
- Is the personal information highly sensitive in nature.
- Was there malicious intent.
- Was the breach accidental.
- Was the unauthorized breach egregious.

- Is there a risk of harm or violence if the snooper's name is included.
- Was there a breach of professional trust by the snooper.
- If it was a case of employee snooping, was the snooper a minor.

6-11 Head to Indicate Decision

Pursuant to section 56 of FOIP or section 45 of LA FOIP, the head of the public body, Minister's office or MLA's office shall provide within 30 days to the complainant and the commissioner's office, the decision on the recommendations in the report. 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, in accordance with subsection 62(2) of FOIP or subsection 52(2) of LA FOIP.

6-12 Appeal to Court

Pursuant to section 57 of FOIP or section 46 of LA FOIP, the complainant or individual has the right to appeal the decision of the head to the Court of King's Bench and the complainant, government institution, local authority, Minister's office or MLA's office will be asked to advise the commissioner's office of the appeal.

Part 7: Procedure on Privacy Breach Investigations Under HIPA

This Part outlines the procedure that the commissioner's office will follow and require trustees follow when carrying out an investigation of a possible privacy breach.

7-1 Complaint of Breach of Privacy

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

- An individual complaining to the commissioner's office about a trustee's, actions or practices;
- Another individual in possession of personal health information notifying the commissioner's office;
- Employees of a trustee 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 commence an investigation.

(2) A complainant can report a possible privacy breach by completing the [*Alleged Breach of Privacy Reporting Form: for Affected Individuals/Complainants*](#) or an equivalent document and delivering it to the commissioner's office by email, regular mail, courier or personal delivery.

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

(4) Once contact is made pursuant to subsection (2), the commissioner's office will advise the complainant or third party of any additional information required to support an investigation and the complainant or third party will have 30 days, unless the commissioner determines otherwise, to provide that additional information. If the information is not provided in that time, the investigation will not continue unless the commissioner determines there are unique circumstances.

7-2 Preliminary Inquiries

Before commencing an investigation, the commissioner's office may make inquiries to determine jurisdiction and to establish if there are sufficient grounds to investigate the possible privacy breach.

7-3 Notice of Investigation

After the commissioner's office determines that there are grounds to investigate, the commissioner's office will prepare and send to the trustee, complainant, and any other interested person, a notice of investigation indicating that an investigation will be undertaken.

7-4 Notice of Investigation and Questionnaire

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

- Completion of the [Privacy Breach Investigation Questionnaire](#) for public bodies.
- Any other relevant information that the commissioner considers necessary for a full investigation.

(2) The notice of investigation will indicate that all of the items requested in the notice of investigation are to be provided within 30 days after receipt of the notice or any further time directed by the commissioner's office.

7-5 Investigation of the Complaint and Alleged Breach

(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 trustee and then continue with its investigation. The commissioner's office will determine whether to request the missing information from the trustee or another organization.

(2) In order to avoid delay, the commissioner's office will request the information by a certain date and if information was not provided by that date or another date directed by the commissioner's office, the commissioner's office will proceed with its investigation and analysis.

(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 after receipt of the notice or any further time directed by the commissioner's office.

7-6 When Investigating a Complaint of a Breach

When investigating a complaint of a possible privacy breach, the commissioner's office will, among other things, confirm whether or not a privacy breach has occurred.

7-7 Steps Taken by Trustee

When the commissioner's office determines that there has been a privacy breach, the commissioner's office will analyze whether the trustee appropriately managed the breach and took the following steps in responding to the privacy breach:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Taken steps to prevent future breaches

7-8 Breach Notification and Questionnaire

When the commissioner's office determines there has been a privacy breach, the commissioner's office will, in addition to other things, review:

- (a) The notice of breach sent to the complainant and affected individuals and determine whether it contains the following:
 - A description of what happened.
 - A detailed description of the personal health information that was involved.
 - If known, a description of possible types of harm that may come to them as a result of the privacy breach.
 - Steps that can be taken to mitigate harm.
 - Steps the organization is taking to prevent the occurrence of similar privacy breaches in the future.
 - The contact information of an individual within the organization who can answer questions and provide further information regarding the breach.
 - A reference to the fact that individuals have a right to complain to the office of the Saskatchewan Information and Privacy Commissioner.
 - The contact information of the office of the Saskatchewan Information and Privacy Commissioner.
 - Where appropriate, recognition of the impacts of the breach on affected individuals and an apology.
- (b) The [Privacy Breach Investigation Questionnaire](#) and consider whether the trustee has:
 - Contained the breach (as soon as possible).
 - Notified affected individuals (as soon as possible).
 - Investigated the breach.
 - Taken appropriate steps to prevent future breaches.

7-9 Preparing a Report

(1) After all information and materials have been gathered and an analysis done, the commissioner's office will proceed to prepare and issue the report.

(2) The report will be sent to:

- The complainant; the trustee and the trustee's designate(s) (if known).
- The Deputy Minister of Health.
- Any other public body, trustee, organization or person the commissioner's office considers appropriate.

7-10 Report will be Posted

(1) Unless the commissioner directs otherwise, seven days after the report is sent to the parties, the report will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.
- Forwarded to other commissioners or ombudsmen across Canada who are responsible for overseeing federal, provincial or territorial access or privacy legislation.

(2) Unless the commissioner directs otherwise, the report posted to the commissioner's office website or forwarded according to subsection (1), will be edited so that the name of the person committing the breach will be changed to initials or other de-identified.

(3) Alternatively, the commissioner may name the person that committed the unauthorized breach in the report after taking into consideration the following:

- Does the complainant or affected individuals need to know in order to protect themselves or take precautionary measures.
- Is the personal information highly sensitive in nature.
- Was there malicious intent.
- Was the breach accidental.
- Was the unauthorized breach egregious.
- Is there a risk of harm or violence if the snooper's name is included.
- Was there a breach of professional trust by the snooper.
- If it was a case of employee snooping, was the snooper a minor.

7-11 Trustee to Indicate Decision

Pursuant to section 49 of HIPA, the trustee shall indicate within 30 days to the complainant and the commissioner's office, the decision on the recommendations in the report. If the trustee 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, in accordance with subsection 60(2) of HIPA.

7-12 Appeal to Court

Pursuant to section 50 of HIPA, the complainant or individual has the right to appeal the decision of the head to the Court of King's Bench and the complainant and the trustee will be asked to advise the commissioner's office of the appeal.

Part 8: Information and Evidence

This Part sets out some basic requirements for communicating with the commissioner's office and the providing of information and evidence.

8-1 Commissioner's Office will Communicate With the Parties or Interested Persons

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

8-2 Providing Information in the Form of an Affidavit or Declaration

(1) Pursuant to section 54 of FOIP, section 43 of LA FOIP or section 46 of HIPA, the commissioner where the circumstances warrant, can require the applicant, complainant, public body, trustee, third party or any other person to provide the information or documents in the form of an affidavit or declaration.

(2) An affidavit or declaration should particularly be used where the issue involves adequate search, custody or control, solicitor client or litigation privilege, claiming subsection 23(3) applies or other evidence to support the public bodies or trustee's position.

8-3 Refusal to Provide Information or Documents

Pursuant to section 54 of FOIP, section 43 of LA FOIP, or section 46 of HIPA, where a person or organization refuses to provide information or documents, under oath or otherwise, the commissioner may issue a Notice to Produce Documents (see Form C) or summon a person to attend at the commissioner's office and give evidence under oath or affirmation and produce documents related to the review or investigation (see Form D).

8-4 Commissioner's Office will Make Inquiries

In any review or investigation, the commissioner's office may ask for relevant information from any person or organization that the commissioner considers necessary for a full review or investigation.

8-5 Party Requesting Oral Representations

(1) Pursuant to section 53 of FOIP, section 42 of LA FOIP, or section 45 of HIPA, a party may choose to provide the commissioner with written representations, affidavits or other documents.

(2) Prior to receiving the report, a party may request a hearing to make oral representations in a course of a review or investigation.

(3) All written or oral representations shall be dealt with by the commissioner pursuant to the confidentiality provisions under section 46 of FOIP, section 48 of LA FOIP or section 54 of HIPA and thus, the commissioner's office will not accept a communication "confidential" or "without prejudice".

(4) An oral hearing held by the commissioner may be held virtually or in person and in either case will be recorded for use by the commissioner's office.

Part 9: Solicitor-Client or Litigation Privilege

This Part sets out the procedure to be followed when a head claims solicitor-client privilege or litigation privilege.

9-1 Claiming Solicitor-Client or Litigation Privilege

- (1) Where solicitor-client or litigation privilege is being claimed as an exemption by the head or delegate, the commissioner's office will request the head or delegate to provide:
 - a. a copy of the records, or
 - b. an affidavit of records, schedule and a copy of the redacted record over which solicitor-client or litigation privilege is claimed setting out the elements requested in Form B.
- (2) Where the commissioner's office has reasonable basis for seeking clarifying information on the face of the affidavit or schedule, the commissioner's office will informally request such clarifying information, which the government institution, local authority or trustee may voluntarily provide without jeopardizing the privilege claimed.
- (3) If the affidavit of records and schedule over which solicitor-client or litigation privilege is claimed does not establish a *prima facie* case for solicitor-client or litigation privilege, and the commissioner has a reasonable basis for questioning the content of the affidavit, the commissioner may, exercising his formal powers, and only as necessary, request additional background information by affidavit or otherwise.
- (4) In rare cases, where the *prima facie* case for privilege is still not established, despite the informal and/or formal requests for additional information by the commissioner's office, and only as absolutely necessary, will the commissioner order production of the records over which privilege is claimed in order to verify the claim in accordance with the commissioner's statutory powers.
- (5) The commissioner's office will not release any record, partial record, or affidavit of records and schedule over which solicitor-client or litigation privilege is claimed to the applicant, unless the head or delegate submitting the affidavit agrees that the record or affidavit, or a portion thereof, can be shared with the applicant.

Part 9.1: Youth Criminal Justice Act – Young Offender

This Part sets out the procedure to be followed when a head claims records are covered by the Youth Criminal Justice Act (YCJA)

9.1-1 Claiming records protected by the YCJA

- (1) Where records are claimed to be protected by the YCJA by the head or delegate, the commissioner's office will request the head or delegate to provide:
 - a. if the time limit has not expired under section 119 of the YCJA, a copy of the records claimed to be protected by the YCJA, or
 - b. if the time limit under section 119 has expired, an affidavit of records, and a schedule listing the records which are claimed to be protected by the YCJA, setting out the elements requested in the schedule to Form E.
- (2) Where the commissioner's office has questions regarding the affidavit of records or schedule, the commissioner's office will request such clarifying information.
- (3) The commissioner's office will not release any record, partial record, or affidavit of records and schedule over which the head has claimed the records are protected by the YCJA, to the applicant, unless the head or delegate submitting the affidavit agrees that the record or affidavit, or a portion thereof, can be shared with the applicant.

Part 9.2: Claims Under Sections 50 of FOIP, 39 of LA FOIP or 43 of HIPA

This Part sets out the procedure to be followed when a head requests that the commissioner discontinue a review.

9.2-1 Requesting a review be discontinued

- (1) Where the head or delegate is requesting a review be discontinued pursuant to sections 50 of FOIP, 39 of LA FOIP or 43 of HIPA, the commissioner's office may request the head or delegate to provide a copy of the unredacted record, a submission providing reasons as to why the review should be discontinued and any evidence supporting the reasons given for discontinuing the review.
- (2) Where the commissioner's office has questions regarding the record, the submission or the evidence, the commissioner's office will request such clarifying information.
- (3) The commissioner's office will not release any record, partial record, over which the head or delegate has requested that the review be discontinued.
- (4) The commissioner's office may decide to:
 - a. discontinue the review and will notify the head or delegate and the applicant giving reasons for the decision;
 - b. treat the request to discontinue the review as a priority matter and issue a report only dealing with the issues raised by the head or delegate in requesting the review be discontinued; or
 - c. deal with the request to discontinue as part of the report that deals with all the issues raised by the head or delegate and the applicant.

Part 10: Application to Disregard an Access to Information Request or a Request for Correction Under FOIP and LA FOIP

This Part sets out the procedure for a public body in applying to disregard an access to information request or a request for correction under FOIP and LA FOIP.

10-1 Head Applies to Disregard an Access to Information Request or a Request for Correction

(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 section 43.1 of LA FOIP, the head shall apply to the commissioner's office and provide information outlined in section 10-2 as soon as reasonably practical, preferably within 10 days of receiving the applicant's request.

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

10-2 Head to Provide Information

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's office 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.

10-3 Head to provide copy

The head shall provide the application to disregard as outlined in section 10-2 to the applicant.

10-4 Parties to Application to Disregard

- (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.

10-5 Commissioner's Office will Make Inquiries

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.

10-6 Priority of Application to Disregard

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 30 days.

10-7 Form of Commissioner's Response

- (1) The commissioner will issue a decision with reasons for the decision and a statement as to whether the application to disregard has been granted or refused.
- (2) The report with the decision of the commissioner will be sent to the head of the public body and FOIP Coordinator or designate(s) and the applicant.

10-8 Decision will be Posted

Unless the commissioner directs otherwise, in seven days after the decision is sent to the parties, the decision will be:

- Posted on the commissioner's office website.
- Forwarded to CanLII.
- Forwarded to the Saskatchewan Legislative Library.
- Forwarded to other commissioners or ombudsmen across Canada who are responsible for overseeing federal, provincial or territorial access or privacy legislation.

Part 11: Use of Artificial Intelligence (AI)

This Part sets out the procedure for a party using AI in its representations or submissions.

11.1 Party makes representations (submissions) and relies on AI

Where a party makes representations to the IPC and relies on artificial intelligence (AI) in the preparation of those representations, the party must disclose to the IPC:

- (a) that AI was used;
- (b) the type of AI used; and
- (c) how AI was used.

11.2 AI used to prepare representations (submissions)

Where AI is used to prepare representations, parties must review the accuracy and content of legal references or analysis contained in their representations that are created or generated by AI and certify in writing to the IPC that they have completed that review. When referring to jurisprudence, statutes, policies, or commentaries in representations, parties must use only well-recognized and reliable sources.

Forms

Form A: Index of Records

Page No.	Severance No.	Exemption(s) Applied	Description (i.e., email, report, slide deck)
1	1	17(1)(a) of FOIP	
	2	29(1) of FOIP	
	3	31(2) of FOIP	
2	1	29(1) of FOIP	
	2	31(2) of FOIP	
	3	17(1)(a) of FOIP	
3	1	16(1)(d) of FOIP	
	2	15(1)(d) of FOIP	
	3	29(1) of FOIP; 27(1) of HIPA	

The Index of Records should address all records withheld in full or in part.

*Severance numbers should be sequential e.g. 1, 2, 3...100

*The page number always has to be included.

*See guidelines on preparation of Index of Records in *Part 2: Procedure on Reviews Under FOIP and LA FOIP* and *Part 3: Procedure on Reviews Under HIPA*.

Form B: Affidavit of Records

CANADA

PROVINCE OF SASKATCHEWAN

IPC FILE NUMBER _____

AFFIDAVIT OF RECORDS

Sworn (or Affirmed) by _____ on

_____, 20__

I _____ of _____
(municipality, province)

have personal knowledge of, or have been advised and do believe, the following:

1. I am the head of _____, a government institution under *The Freedom of Information and Protection of Privacy Act* (FOIP) or a local authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

OR

I am _____ in the _____, a government institution or local authority and have been delegated by the head with responsibilities under FOIP or LA FOIP.

2. The records listed in the attached Schedule are in the possession or under the control of the government institution (or the local authority).

3. On behalf of the government institution (local authority), I claim solicitor-client privilege or litigation privilege for each record or portions of a record listed in the attached Schedule.

4. In respect of those records, or portions of records, claimed to be protected by solicitor-client privilege, I have knowledge of, or believe, that the records relate to communications and information shared:

- i) Between solicitor and client, and/or third party, with sufficient common interest in the same transactions.
- ii) For the purpose of the seeking or obtaining of legal advice.
- iii) Intended to be kept confidential and have been consistently treated as confidential.

5. In respect of those records, or portions of records, claimed to be protected by litigation privilege, I have knowledge of, or believe, that the records were created for the dominant purpose of litigation, existing or anticipated, including any closely related proceedings. Such existing or anticipated litigation has not concluded.

SWORN (OR AFFIRMED) BEFORE ME)

at _____, Saskatchewan)

this ____ day of _____, 20__)

)

_____)

(signature)

A Commissioner for Oaths for Saskatchewan

My Appointment Expires_____

Schedule

Record No. or Page No.	Severance No.	No. of pages	Type of Record (email, letter, etc.)	Author	Recipient(s)	Date	Type of Privilege Claimed (Check one)	
							Solicitor Client	Litigation



Office of the
Saskatchewan Information
and Privacy Commissioner

Form C: Notice to Produce Records

IPC File Number _____

IN THE MATTER OF AN APPLICATION FOR A REVIEW OF AN ACCESS TO INFORMATION
REQUEST

AND

NAME OF PUBLIC BODY OR TRUSTEE [FULL NAME]

NOTICE TO PRODUCE RECORDS

TO: _____

(name of person and street address)

GREETINGS:

Pursuant to section 54 of *The Freedom of Information and Protection of Privacy Act*, [section 43 of *The Local Authority Freedom of Information and Protection of Privacy Act*; or section 46 of *The Health Information Protection Act*], I require you produce to the Office of the Saskatchewan Information and Privacy Commissioner at 503-1801 Hamilton Street, Regina, Saskatchewan S4P 4B4 by 10:00 a.m. on _____, 20__ the following documents and items responsive to the Access to Information Request dated _____, 20__ including the following:

(List any documents specifically required)

If you do not comply with the enclosed Notice to Produce Records by _____, 20____, a *summons* will be issued in respect of the records.

ISSUED at Regina, Saskatchewan, this _____ day of _____, 20_____.

Diane Aldridge, Deputy Commissioner



Office of the
Saskatchewan Information
and Privacy Commissioner

Form D: Summons

IPC FILE NUMBER _____

IN THE MATTER OF A REVIEW UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* [*THE LOCAL AUTHORITY FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*]

AND

NAME OF PUBLIC BODY OR TRUSTEE [FULL NAME] _____

SUMMONS

TO: _____

(name of person and street address)

GREETING:

Pursuant to section 54 of *The Freedom of Information and Protection of Privacy Act*, [section 43 of *The Local Authority Freedom of Information and Protection of Privacy Act*; or section 46 of *HIPA*], you are required to attend to testify as a witness as follows:

Before the Information and Privacy Commissioner – Ronald J. Kruzeniski

Where: 503-1801 Hamilton Street, Regina, Saskatchewan

Date: _____, 20__

Time: 10:00 a.m.

and so, from day to day until the above matter is adjourned and if the matter is adjourned to attend on the date to which it is adjourned.

You are required to bring with you and produce at that time and place the following documents and items *(all documents related to the Access to Information Request [insert public body file number] dated _____ 20__ including the following:*

(List any documents specifically required)

NOTICE ON CHOICE OF OATH: When you attend to the Office of the Saskatchewan Information and Privacy Commissioner, you will be offered the choice of swearing an oath or making an affirmation. An affirmation is a non-religious promise to tell the truth. An oath can be taken in any way that is consistent with your religious beliefs, so long as you take an oath, which binds your conscience to tell the truth. If you wish to give your evidence by swearing an oath upon a holy text other than the Christian Bible, Jewish Bible, Koran or Bhagavad-Gita (which are readily available), contact the Office of the Saskatchewan Information and Privacy Commissioner to confirm that the holy text of your choice is available. Alternatively, you may bring with you any religious symbol or holy text and advise the Office of the Saskatchewan Information and Privacy Commissioner, prior to the matter commencing, how you wish to take your oath.

ISSUED at Regina, Saskatchewan, this _____ day of _____, 20__.

Information and Privacy Commissioner
Ronald J. Kruzeniski, K.C.

Form E:

CANADA
PROVINCE OF SASKATCHEWAN
IPC FILE NUMBER _____

AFFIDAVIT OF RECORDS

Sworn (or Affirmed) by _____ on
_____, 20__

I _____ of _____
(municipality, province)

have personal knowledge of, or have been advised and do believe, the following:

1. I am the head of _____, a government institution under *The Freedom of Information and Protection of Privacy Act* (FOIP) or a local authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

OR

I am _____ in the _____, a government institution or local authority and have been delegated by the head with responsibilities under FOIP or LA FOIP.

2. The records listed in the attached Schedule are in the possession or under the control of the government institution (or the local authority).

3. I have personally reviewed each of the records referred to in the attached Schedule and am of the opinion that the records:

- (a) contain information about a young person;
- (b) would identify the young person, contrary to subsection 118(1) of the *Youth Criminal Justice Act*; and
- (c) cannot be provided because it is beyond the applicable access period set out in subsection 119(2) of the *Youth Criminal Justice Act*.

And are protected by the *Youth Criminal Justice Act* and cannot be released to the Information and Privacy Commissioner or the Applicant.

SWORN (OR AFFIRMED) BEFORE ME)
At _____, Saskatchewan)

this ____ day of _____, 20__)
)
)
)

A Commissioner for Oaths for Saskatchewan
My Appointment Expires _____

(signature)

Schedule

Record No. or Page No.	No. of pages	Type of Record (email, letter, etc.)	Author	Recipient(s)	Date	Description