



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
*British Columbia*

**TIPS for DMIPS and Freedom of Information  
and Privacy Coordinators:**

**Conducting a Privacy Complaint Investigation  
under the  
*Freedom of Information and Protection of Privacy Act*  
(“FOIPP Act”)**

Revised July 10, 2003

## **Purpose of This Document**

*This document offers suggestions for public bodies to refer to when conducting an internal investigation into a breach of privacy complaint.*

*These suggestions are for information only and do not constitute a decision or finding by the OIPC with respect to any matter within the jurisdiction of the Information and Privacy Commissioner under the FOIPP Act. The suggestions do not affect the powers, duties or functions of the Information and Privacy Commissioner regarding any complaint, investigation or other matter under or connected with the Act, respecting which the Information and Privacy Commissioner will keep an open mind. Responsibility for compliance with the FOIPP Act remains with each public body. Those responsible for access and privacy matters within each public body must at all times apply their best judgment in discharging the powers, duties and functions of the public body under the FOIPP Act.*

### **Step 1: Clarify the complaint and determine the applicability of the Freedom of Information and Protection of Privacy Act**

*Clarify the specifics of the complaint.*

*Ask the complainant:*

- What do you believe occurred?
- What personal information is involved and what happened to it?
- When and where did the event(s) occur?
- Which staff do you believe were involved, and why do you believe they were involved?
- Do you have written or other evidence that the alleged incident occurred?

*Ask yourself or your staff:*

- Is the complaint about an alleged improper collection, use, disclosure, retention, storage or disposal of information in a record<sup>1</sup> about an identifiable individual by your public body?
- Or, is the complaint about a failure or refusal to correct or annotate information? (To be sure, refer to the specific definitions and sections of the Act.)
- Determine if, on the face of it, the complaint concerns a contravention of the privacy protections set out in Part 3 of the FOIPP Act.

*If the complaint does not involve a contravention of Part 3 of the Act, the complaint may be resolvable at this point, so jump to Step 3, Part B.*

*If there was improper action of some kind, continue through Steps 2 and 3.*

## **Step 2:      Gathering information and making findings**

*If you are unfamiliar with the program area in your public body where the complaint originates, you may need to learn more about the program to fully understand the circumstances of the complaint.*

*For example, if the complaint concerns an alleged inappropriate collection or disclosure of medical information as part of an application for medical leave, you may need to find out how the medical leave application process works; what the employer normally needs to assess the application; what the employee is expected to provide in way of personal medical information; and what happens to it during the application approval process in order to determine if there was inappropriate conduct or action.*

*Therefore, be sure to:*

- Ask program staff to comment on the complaint and explain what happened. You may need to interview people and ask for written reports.
- Consider and verify the authority in Part 3 of the FOIPP Act or other legislation, if any, under which staff believed they were acting.

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<sup>1</sup> “record” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

- Clarify why staff did what they did (e.g. were they following established policies or guidelines or another enactment?) and gather the details of any policies, guidelines or enactments that may apply.
- Determine whether the incident did actually contravene a specific section of Part 3 of the FOIPP Act.
- Detail what improper collection, use, disclosure, retention, storage or disposal of recorded personal information by a public body employee took place for which there is no authority under Part 3 of the Act.
- If contravention did occur, determine the specific cause, such as a poorly drafted policy, an accident, lack of knowledge, or a deliberate action.

### **Step 3: Taking Action**

#### A. The complaint is substantiated:

*If you determine that there was a contravention of the privacy protections set out in Part 3 of the FOIPP Act, consider whether any immediate actions are required to rectify the situation, such as:*

- recovering information that was inappropriately disclosed;
- destroying or returning information that was inappropriately collected; or
- immediately halting a practice that is found to be privacy-invasive, like video surveillance.

*Provide the complainant with an explanation (preferably in writing) detailing:*

- what happened, including the specific personal information of the complainant that was involved;
- your findings;
- a description of any action you have taken to prevent a recurrence; and
- your recommendations to your public body for improvements to its policies or procedures to better protect the privacy of personal information and comply with Part 3 of the FOIPP Act.

- If applicable, that your public body will develop and implement a method of preventing recurrence of the privacy invasion over the long term by techniques such as:
  - (i) training;
  - (ii) changing policies or practices;
  - (iii) limiting who can access personal information; and
  - (iv) implementing better security measures, like audit trails, encryption, and passwords.

*Make sure you monitor these processes after their implementation to ensure they are working.*

- Wherever possible, ask the complainant to comments on your complaint investigation report. Ask for these comments by a certain date so that you will know whether or not the complainant wants to make his or her comments known to you and the public body.
- Tell the complainant he/she has the right to appeal your investigation findings to the OIPC and give the complainant the OIPC's contact information.

B. The complaint cannot be substantiated

*If there was no contravention, you still need to explain your findings to the complainant.*

*Tell the complainant:*

- If there was legislative authority for the action, that the FOIPP Act or other legislation (e.g. the *BC Benefits Act* or the *Motor Vehicle (Insurance) Act*) explicitly or implicitly authorizes your public body to collect, use, and/or disclose the personal information in the manner the complainant has complained about.
- If no recorded personal information was involved, that the incident did not involve "personal information" as defined by the FOIPP Act. (You may still have determined that there was an inappropriate verbal exchange of information, so clarify that you have reminded staff of the need and importance of keeping personal information confidential. In such cases, it is also helpful to explain to the complainant what you and staff at your public body have learned from the incident and what actions you have taken to prevent a recurrence.
- That they may comment on your complaint investigation findings. Ask for these comments by a certain date so that you will know whether or not the complainant wants to make his or her comments known to you and the public body.
- They have the right to appeal your investigation findings to the OIPC and the OIPC contact information.