



OIPC Policy, Procedures and Criteria for Declining to Investigate

This document sets out the conditions under which the OIPC may decline to investigate a complaint or request for review.

POLICY

The Commissioner makes every reasonable effort to investigate allegations that a public body or organization has failed to comply with the *Freedom of Information and Protection of Privacy Act* (FIPPA) or the *Personal Information Protection Act* (PIPA). However, if the Commissioner determines that it is plain and obvious that an investigation would not meaningfully further the protection of privacy, would not make public bodies more accountable, or would not otherwise be in the public interest, the Commissioner may decline to investigate an allegation of non-compliance.

This does not mean that the Commissioner must decline to investigate whenever any of these criteria apply. The Commissioner will make a decision on the merits of each case, taking into account all of the relevant circumstances, including the information rights of the complainant.

PROCEDURES

Upon receiving a complaint or request for review, a Case Review Officer will review the documentation and assess whether the OIPC has the information needed to proceed. However, if it appears that one or more criteria in this policy apply, an investigation will not be opened, and a letter will be sent to the applicant advising them of the reasons for the decision to decline to proceed.

An applicant or complainant may request a reconsideration of the Case Review Officer's decision to decline to investigate by submitting an application with attention to the Manager of Case Review for decision or assignment within 15 days of the instruction letter being sent. In order for the matter to proceed, the applicant or complainant must demonstrate why the decline policy does not apply to their issues or why the decision to decline to review was an error or a breach of natural justice or administrative fairness.

If on reconsideration the OIPC determines that the policy and criteria for declining **apply**, an investigation will not be opened a letter will be sent to the applicant advising them of the reasons for the decision.

If on reconsideration the OIPC determines the policy and criteria for declining **do not apply**, the file is opened and processed in accordance with OIPC procedures.

CRITERIA

The following criteria will be considered when determining whether a matter brought to the OIPC will be investigated, in whole or in part.

Insufficient reason to conduct an investigation or review	<ul style="list-style-type: none"> • An investigation will not serve to protect the privacy of any individual, or the complaint primarily affects a person other than the complainant and the complainant does not have sufficient interest in the complaint, and the complaint does not raise wider privacy concerns; • An investigation will not serve to hold a public body accountable; • The complainant is attempting to have a matter investigated that was already decided in a previous Order or Decision (<i>Res Judicata</i>); • It is plain and obvious that the requested records are subject to an exception and the review raises no other arguable issues; • It is plain and obvious the records requested by the applicant fall outside the scope of FIPPA or PIPA and the review raises no other arguable issues.
Complainant has not provided sufficient or accurate information as required by the OIPC to initiate or maintain an investigation or review	<ul style="list-style-type: none"> • Complainant has failed to provide the OIPC with a full name, current mailing address and phone number; • The complainant claims to be representing another individual but has failed to provide the OIPC with valid consent or proof of representation; • Complainant has failed to respond to the OIPC after a reasonable number of attempts to contact the complainant; • Complainant has failed to advise the OIPC of a new address and telephone number at which the OIPC can contact the complainant; • Complainant has failed to provide the OIPC with the name of the public body or organization complained about and the name of the individual with whom they interacted. Providing the means to find the information (e.g. website URL) or to trace the identity of the party complained about is not sufficient; • Complainant provided false or misleading information.
Complainant has not demonstrated that there is a reasonable basis for the complaint or review	<ul style="list-style-type: none"> • There are no reasonable grounds to believe that an organization or public body has failed to comply with PIPA or FIPPA. For example, the complaint is speculative (e.g. the mere possession of personal information does not mean it was collected unfairly); • The complaint cannot be determined; such as letters with vague allegations that don't align with the OIPC's jurisdiction from individuals who are misinformed about the OIPC's role; • Where there may have been a breach of law but there is no evidence that the complainant was harmed by the breach.
The complaint or review is frivolous, vexatious, or not made in good faith	<p>'Trivial' – a complaint or request for review that is small, trifling or of inconsiderable importance. A complaint or review may be trivial despite being technically well founded.</p> <p>'Vexatious' – the complainant has habitually and persistently made numerous complaints or request for reviews against the same entity and are identified as</p>

	<p>intending to annoy, harass, embarrass or cause discomfort to the entity or for some other improper purpose.</p> <p>‘Frivolous’ – complaint or review is widely accepted as lacking legal basis, legal merit, or it is plain and obvious the complaint or review cannot succeed.</p> <p>Complaint or request for review is made in bad faith, is made for an improper purpose or is motivated by factors not related to privacy or accountability.</p>
<p>The Complainant has not attempted other means of resolving their complaint, or has failed to address a dispute in a timely manner</p>	<ul style="list-style-type: none"> • Complaint is made more than six months after the complainant knew of or ought to have known of the decision or action to which the complaint refers; • Complainant has failed to attempt to resolve their dispute or complaint directly with the public body or organization in the manner required by the OIPC; • The public body or organization has responded with a fair and reasonable response or remedy; • Existing laws or administrative procedures provide a remedy adequate in the circumstances and the complainant has not taken advantage of those procedures and there is no reasonable justification for failure to do so; • The remedy or outcome expected, or sought by the complainant, is not meaningful or cannot be achieved.