



## **OIPC Policy, Procedures and Criteria for Discontinuing Investigations or Reviews**

*This document sets out the conditions under which investigations and reviews may be discontinued by an OIPC Investigator.*

### **POLICY**

The Commissioner makes every reasonable effort to resolve complaints and settle reviews under 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 continuation of the investigation or review 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 continue an investigation or a review.

This does not mean that the Commissioner must discontinue an investigation or a review 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**

During an investigation or a review, an investigator may identify cases where some or all of the issues in an investigation are subject to the OIPC's policy for discontinuing an investigation or review.

If an issue in an active investigation **clearly meets** the policy and criteria for discontinuing, the investigator can make a decision to discontinue the issue(s). The applicant is advised by letter of the reasons for the investigator's decision.

If an investigator determines that an issue in an active investigation **may meet** the policy and criteria for discontinuing, the applicant is invited to make a written submission as to why the issue or file should be continued. The investigator reviews the response and decides if there are grounds to discontinue. If the investigator concludes the file meets one or more criteria for discontinuation, the relevant information is forwarded to the Director of Investigations for a consultation on a final decision. If the director confirms the investigator's decision to discontinue, a letter will be written to the applicant explaining the rationale for discontinuing the issue(s).

In either case, the applicant or complainant may request a reconsideration within 15 days of receiving the decision to discontinue, with attention to the Deputy Commissioner for assignment. In order for the matter to be re-opened, the applicant or complainant must demonstrate why the discontinue policy does not apply to their issues or why the decision to discontinue was an error or a breach of natural justice or administrative fairness.

If on reconsideration the OIPC determines that the policy and criteria for discontinuing **apply**, the file will remain closed and 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 discontinuing **do not apply**, the file is reopened 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 discontinued.

<b>Insufficient reason to continue with investigation or review</b>	<ul style="list-style-type: none"> <li>• When continuing the investigating will not serve to protect the privacy of any individual or meaningfully advance privacy in general;</li> <li>• When continuing the investigation will not meaningfully advance accountability;</li> <li>• When it is plain and obvious that the records at issue are subject to an exception or fall outside the scope of FIPPA or PIPA;</li> <li>• When further investigation or review cannot reasonably be expected to bring about a more satisfactory result;</li> <li>• When it is plain and obvious the matter(s) under investigation or review has already been decided, or is currently being investigated or reviewed by the Commissioner;</li> <li>• When there is no meaningful remedy for the remaining issues, or the remedy sought by the complainant is not meaningful or cannot be achieved.</li> </ul>
<b>Complainant has not provided sufficient evidence or grounds to continue an investigation or review</b>	<ul style="list-style-type: none"> <li>• When there are opposing views on the matter in dispute with no conclusive evidence to support either side;</li> <li>• Applicant/Complainant has not provided reasonable basis for believing a contravention has or continues to occur.</li> </ul>
<b>Alternative proceedings or remedies are available</b>	<ul style="list-style-type: none"> <li>• The public body or organization has provided a reasonable response and there is no further meaningful remedy available;</li> <li>• Other legislated bodies or other legislation or processes may be more appropriate to deal with the matter; or a matter directly relates to a dispute that is currently or soon to be under investigation by another regulatory or law enforcement body.</li> </ul>
<b>Remaining issues are trivial, vexatious, frivolous or in bad faith</b>	<p><b>‘Trivial’</b> – a complaint or review that is small, trifling or of inconsiderable importance. A complaint or review may be trivial despite being technically well founded.</p> <p><b>‘Vexatious’</b> – the complainant has habitually and persistently made numerous complaints or request for reviews against the same entity and are identified as intending to annoy, harass, embarrass or cause discomfort to the entity or for some other improper purpose.</p> <p><b>‘Frivolous’</b> – 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 <b>made in bad faith</b>, is made for an improper purpose or is motivated by factors not related to privacy or accountability.</p>