

## 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 (including their delegate) 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 will review the response and decide 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).

If an applicant or complainant has concerns about the decision to discontinue an investigation, they have 15 business days to submit an application for reconsideration to the Director of Investigations.

Note: Requests for reconsideration are not an appeal on the merits of the Investigator's decision; rather they are limited to the grounds set out below. While there is no statutory obligation under FIPPA or PIPA to reconsider the outcome of a complaint investigation, it is OIPC policy to review requests for reconsideration and to re-open a file when there are reasonable grounds to do so. A file *may* be re-opened under the following circumstances:

- When it is necessary to correct a clerical error, an accidental error, or an omission by the Investigator;
- When the finding has resulted from a breach of natural justice or administrative fairness;
- When relevant issues were not addressed; or

- Where new evidence or facts are brought forward that were not previously available to the individual seeking the reconsideration.

If the file is re-opened, the possible outcomes are:

- a) Confirm all or part of the Investigator's findings;
- b) Direct further investigation by an Investigator on all or part of the issues raised;
- c) Determine that no further action should be taken with respect to all or part of the complaint if further action would not serve the interest of a just determination of the issues raised in the complaint;
- d) Refer the matter to a hearing.

### CRITERIA

The following criteria will be considered when determining whether a matter brought to the OIPC will be discontinued.

<p><b>Insufficient reason to continue with investigation or review</b></p>	<ul style="list-style-type: none"> <li>• When continuing the investigation 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 that the matter(s) under investigation or review have already been decided, or are 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> <li>• When the organization is outside of the OIPC's jurisdiction.</li> </ul>
<p><b>Complainant has not provided sufficient evidence or grounds to continue an investigation or review</b></p>	<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>
<p><b>Alternative proceedings or remedies are available</b></p>	<ul style="list-style-type: none"> <li>• The public body or organization has provided a reasonable response and there is no further meaningful remedy; or</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>

<p><b>Remaining issues are trivial, vexatious, frivolous, or in bad faith</b></p>	<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; for example, a fee in dispute is less than \$75.</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>
<p><b>The complaint or review exceeds the OIPC file limit of three open files permitted at one time</b></p>	<ul style="list-style-type: none"> <li>• Complainant has a combined total of three open files (all types) across all areas of the OIPC (Intake, Investigations and/or Adjudication). The OIPC has a high demand for services. In order to ensure equitable and timely access to OIPC services, the OIPC limits the number of open files each applicant/complainant can have.<sup>1</sup></li> </ul>
<p><b>The complaint or review does not follow OIPC guidance, policies, or processes regarding submission limits or timelines.</b></p>	<ul style="list-style-type: none"> <li>• The complaint or review exceeds the permissible page limits.</li> <li>• The request for reconsideration is submitted beyond the 15-business day limit.</li> </ul>

<sup>1</sup> Journalists, researchers from academic institutions and advocacy organizations are excluded from number of files permitted