



## 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 (including their delegate) 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.

If an applicant or complainant has concerns about no, they have up to 15 business days to submit an application requesting a reconsideration to the Director of Case Review. Note that requests for reconsideration are not an appeal on the merits of the Case Review Officer'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 Case Review Officer;
- 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 findings of the Case Review Officer;
- b) Direct further investigation by a Case Review Officer or 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 investigated in whole or in part.

<p><b>Insufficient reason to conduct an investigation or review</b></p>	<ul style="list-style-type: none"> <li>• 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;</li> <li>• An investigation will not serve to hold a public body accountable;</li> <li>• The complainant is attempting to have a matter investigated that was already decided in a previous Order or Decision (<i>Res Judicata</i>);</li> <li>• It is plain and obvious that the requested records are subject to an exception and the review raises no other arguable issues;</li> <li>• It is plain and obvious the records requested by the applicant or a complaint is outside the scope of FIPPA or PIPA and raises no other arguable issues; or</li> <li>• The organization is outside of the OIPC's jurisdiction.</li> </ul>
<p><b>Complainant has not provided sufficient or accurate information as required by the OIPC to initiate or maintain an investigation or review</b></p>	<ul style="list-style-type: none"> <li>• Complainant has failed to provide the OIPC with a full name, current mailing address, and phone number;</li> <li>• Complainant claims to be representing another individual but has failed to provide the OIPC with valid consent or proof of representation;</li> <li>• Complainant has failed to respond to the OIPC after a reasonable number of attempts were made to contact the complainant;</li> <li>• Complainant has failed to advise the OIPC of a new address and telephone number through which the OIPC can contact the complainant;</li> <li>• Complainant has failed to provide the OIPC with the name of the public body or organization that is the subject of the complaint 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 considered sufficient; or</li> <li>• Complainant provided false or misleading information.</li> </ul>
<p><b>Complainant has not demonstrated that there is a reasonable basis for the complaint or review</b></p>	<ul style="list-style-type: none"> <li>• 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);</li> <li>• 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; or</li> <li>• Where there may have been a breach of law but there is no evidence that the complainant was harmed by the breach.</li> </ul>
<p><b>The complaint or review is frivolous, vexatious, or not made in good faith</b></p>	<p><b>"Trivial"</b> – 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><b>"Vexatious"</b> – the complainant has habitually and persistently made numerous complaints or requests for review 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><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 Complainant has not attempted other means of resolving their complaint, or has failed to address a dispute in a timely manner</b></p>	<ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• The public body or organization has responded with a fair and reasonable response or remedy;</li> <li>• Existing laws or administrative procedures provide a remedy adequate in the circumstances, the Complainant has not taken advantage of those procedures, and there is no reasonable justification for failure to do so; or</li> <li>• The remedy or outcome expected or sought by the complainant is not meaningful or cannot be achieved.</li> </ul>
<p><b>The complaint or review exceeds the OIPC file limit of four 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