

## **Investigation Process: Correction complaints**

### **Section 68 of the *Right to Information and Protection of Privacy Act***

#### **Summary and purpose**

The purpose of the Ombud's authority to accept and investigate complaints about how a public body has handled an applicant's request to correct his or her own personal information is to provide for an independent review mechanism under the *Act*.

Section 40 of the *Act* grants individuals who believe that there is an error or omission in their personal information in the custody of or under the control of a public body to correct the information. If the public body in question does not grant the request to correct his or her personal information, the public body must notify the applicant of its decision and the reasons why, as well as inform that he or she has the right to make a complaint with our Office about the refusal.

Section 67 of the *Act* grants an applicant the right to complain to our Office if he or she "is not satisfied with the decision of a head of a public body to refuse a request to correct an error or omission in the applicant's personal information".

Complaints to our Office must be made in writing and must be filed with our Office within 40 business days after an applicant receives notice of the public body's decision or the date the applicant becomes aware of the act or omission of the head of the public body (s. 67(3)). The Ombud may allow a longer period for filing a complaint in appropriate circumstances (s. 67(4)).

#### **Investigation process**

The Ombud's powers to address access complaints are found in s. 68 of the *Act*:

**68(1)** Subject to subsection 65(2) and section 69, on receiving a complaint the Ombud shall investigate the complaint or shall take steps to resolve the complaint informally under subsection (2).

**68(2)** The Ombud may take any steps the Ombud considers appropriate to resolve a complaint informally to the satisfaction of the parties in a manner consistent with the purposes of the *Act*.

**68(3)** If the Ombud cannot resolve a complaint within 45 business days after the commencement of the informal resolution process referred to in subsection (2) or within the extended time limit under subsection (4), as the case may be, the Ombud shall investigate the complaint and shall prepare the report referred to in section 73.

**68(4)** The Ombud may only extend the time limit in subsection (3) with the consent of the applicant or the third party, as the case may be, and the head of the public body.

Upon receipt of a correction complaint, we will first review the information provided to verify whether we have jurisdiction to investigate the complaint (is the complaint about a public body that is subject to the *Act*?), whether the complaint documentation is complete (i.e., completed Form 2, a copy of the correction request, and a description of

what the applicant would like to complain about), and whether the complaint was made to our Office in a timely fashion.

Once we have determined our authority to investigate the complaint, we will send a copy of the correction complaint to the public body in question. At that time, we will also ask the public body to provide us with a response to the complaint, which may include asking for explanations as to why the public body decided not to make the requested correction, as well as a copy of the information in question for our review.

### **Informal resolution**

Our Office will take any steps we consider appropriate to informally resolve the complaint through discussions with both the public body and the applicant. The informal resolution process begins once we have received the public body's response to our notice of complaint, including the relevant records for our review, following which we have 45 business days to resolve the complaint informally. We have the authority to extend the informal resolution process only with the consent of both the applicant and the head of the public body.

If, based on our review and discussions with the public body and the applicant, both parties to the complaint are satisfied with the informal resolution, the matter is successfully resolved and we will close our file.

### **If not informally resolved, matter is remitted to the Ombud**

If the complaint is not informally resolved within 45 business days (or the extended time limit as consented to by both parties, as the case may be) from the start of the informal resolution process, the matter will be remitted to the Ombud for final disposition. The Ombud will review the matter with a view to determine whether a formal investigation is merited or if it would be appropriate to refuse to investigate under s. 69 of the *Act*. For example, the Ombud may refuse to or cease to investigate a complaint if, having regard to all the circumstances of the case, further investigation is unnecessary (which will usually be the case where our Office is satisfied that the public body has responded adequately to the complaint through the informal resolution process).

If the Ombud decides to proceed with a formal investigation, the Ombud will review the matter and allow the parties to the complaint, as well as any other person the Ombud considers appropriate, to make representations. On completing an investigation, the Ombud will prepare a report with the Ombud's findings and will either recommend that the public body grant the request to correct the applicant's personal information in its custody or under its control or confirm the public body's decision to refuse the applicant's correction request.

The Ombud's investigation is to be completed and a report made under s. 73 of the *Act* within 90 business days after a complaint is filed with our Office, although the Ombud has the authority to extend the time limit to do so of his or her own accord so long as the Ombud notifies the parties and anyone who has made representations of the anticipated date for providing the report.

Upon completion, the Ombud must provide a copy of the report to both the applicant and the public body.

### **Complying with the recommendation**

If the Ombud's report contains a recommendation to the public body, the public body must decide whether it will accept the Ombud's recommendation or not. The public body is required to decide within 20 business days after receiving the Ombud's report and give written notice to the applicant, with a copy to our Office. The public body's notice shall inform the applicant of the reasons for the public body's decision.

If the public body accepts the recommendation, the public body shall comply with it within 20 business days after receiving the Ombud's report.

If the public body does not accept the Ombud's recommendation, the public body's notice must inform of the applicant's appeal rights under the *Act* and the time limit in which to do so. A failure on the part of the public body to notify the applicant of its decision within 20 business days is treated as a decision to not accept the Ombud's recommendation, thus triggering the appeal rights under the *Act*.

Should this be the case, the applicant would then be entitled to appeal the matter to a judge of the Court of Queen's Bench under s. 75 of the *Act*. In the event that the applicant opts not to exercise his or her appeal rights, the Ombud has the authority to appeal the matter on his or her own motion under s. 75(2) of the *Act*.

**ACCESS AND PRIVACY DIVISION**  
**DIVISION DE L'ACCÈS À L'INFORMATION ET DE LA PROTECTION DE LA VIE PRIVÉE**  
230-65 rue Regent St., Fredericton, NB E3B 7H8  
☎ 506.453.5965/877.755.2811 📠 506.453.5963  
✉ [aip-aivp@gnb.ca](mailto:aip-aivp@gnb.ca)  
[www.ombudnb-aip-aivp.ca](http://www.ombudnb-aip-aivp.ca)