

## **Investigation Process: Privacy complaints**

**Section 64.1(1)(f) of the *Right to Information and Protection of Privacy Act***

**Section 68(2) of the *Personal Health Information Privacy and Access Act***

### **Summary and purpose**

Individuals who have concerns about how their personal information and/or personal health information has been handled by public bodies or custodians have the right to file a complaint with our Office.

An individual who is concerned that a custodian may have collected, used or disclosed his or her personal health information contrary to the *Personal Health Information Privacy and Access Act* or failed to protect his or her personal health information in a secure manner has the right to complain to our Office under s. 68(2).

Under s. 64.1(1)(f) of the *Right to Information and Protection of Privacy Act* grants the Ombud the power “to receive and investigate complaints from the public related to the collection, use and disclosure of personal information under Part 3 and make any recommendations as a result”.

Unlike access to information complaints, both statutes are silent on the time limit for privacy complaints to be filed with our Office and how our Office is to conduct such investigations. For this reason, we have decided to adopt a similar investigation process for privacy complaints filed with our Office, as described below.

We ask that privacy complaints be made to our Office in writing and provide a clear description of what the person thinks has happened with his or her own personal information or personal health information.

### **Investigation process**

Upon receipt of a privacy complaint, we will first review the information provided to verify whether we have jurisdiction to investigate the complaint (i.e., that the complaint involves a custodian or public body), and whether the individual has provided our Office with sufficient details to undertake an investigation.

Once we have determined our authority to investigate the complaint, we will send a copy of the privacy complaint to the custodian or public body in question, as the case may be. At that time, we will also ask the custodian or the public body to provide us with a response to the complaint, which will often involve us asking for the custodian’s or the public body’s explanations as to how the person’s information was handled, and related information such as copies of applicable policies or procedures, copies of audit logs showing when the person’s information was accessed, and the like.

The goal of a privacy investigation is for us to determine whether the individual’s personal information and/or personal health information was handled in accordance with the applicable statute. If we find that a custodian or public body has not handled an individual’s personal information or personal health information in keeping with its obligations under the law, we will work with the custodian or public body to ensure that appropriate corrective measures are put in place to prevent a similar issue from happening again.

### **Informal resolution**

Our Office will take any steps we consider appropriate to informally resolve the complaint through discussions with both the custodian or public body and the person who filed the privacy complaint. This will include us determining whether the public body handled the person's information in keeping with the requirements of the *Act*. Where we find that the public body did not properly handle the personal information in question, we will work with the public body to ensure that appropriate corrective measures are put in place to remedy the problem.

If, based on our review and discussions with the custodian or the public body and the person who filed the privacy complaint, 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 we are unable to affect an informal resolution of the privacy complaint, the matter will be remitted to the Ombud for final disposition. The Ombud will review the matter with a view to determine if a formal investigation is merited or whether it would be appropriate to refuse to investigate under s. 70 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 custodian or 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 may issue recommendations for appropriate corrective measures, if deemed necessary under the circumstances. The Ombud's report will be shared with the person who filed the complaint and the custodian or the public body who was the subject of the complaint.

### **Complying with the recommendation**

While neither statute sets out a process for a custodian or a public body to follow in responding to a recommendation issued by the Ombud as a result of a privacy complaint investigation, we will follow up with the custodian or the public body as necessary to verify whether the recommendation is being followed.

There is no right under either statute to appeal a decision not to follow a recommendation of the Ombud to the courts.

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