

Code of Procedure

for appeals under the *Freedom of Information and Protection of Privacy Act*
and the *Municipal Freedom of Information and Protection of Privacy Act*



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

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PART I – INTRODUCTION

1. APPLICATION

- 1.01 This Code applies to appeals under the **Freedom of Information and Protection of Privacy Act (FIPPA)** and the **Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**.

2. PURPOSE AND INTERPRETATION

- 2.01 Subject to the provisions of FIPPA and MFIPPA, this Code is to be broadly interpreted in the public interest to secure the most fair, just, and expeditious determination on the merits of every Appeal.
- 2.02 Where specific procedures are not set out in this Code, the IPC may do whatever is permitted by law to enable it to effectively and completely resolve an Appeal and to ensure compliance with the provisions of any decision or Order.
- 2.03 The IPC may, in its discretion, waive or vary any of its own procedures in accordance with section 17.
- 2.04 If the IPC omits to follow any procedure in this Code, it does not for that reason alone render an Appeal, or any step in an Appeal, invalid.
- 2.05 Any individual participating in an Appeal is entitled to accommodation in accordance with the Human Rights Code and should notify the IPC as soon as possible if accommodation is required.
- 2.06 Any individual participating in an Appeal may participate in IPC proceedings in English or French and Parties may provide written materials in either English or French.
- 2.07 During the IPC's consideration of an Appeal, Parties shall adhere to the IPC's **Public Code of Conduct**.

3. DEFINITIONS

3.01 In this Code, the following definitions apply:

Act (or collectively, **Acts**) means the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, whichever applies.

Adequacy of Decision Appeal means an Appeal in which the sole issue is whether the Institution's written decision complies with the requirements of the *Act*.

Adjudication means a stage of the appeal process in which an Adjudicator may conduct an Inquiry.

Adjudicator means the Commissioner or any other person to whom the Commissioner has delegated the power to conduct an Inquiry.

Affected Person means an individual, organization, or any other entity whose interests may be affected by an Appeal.

Appeal means a proceeding in which the IPC is asked to review a decision of an Institution concerning a Request under the *Act*.

Appellant means a person who appeals a decision of an Institution concerning a Request under the *Act*.

Code means the *Code of Procedure for Appeals under the Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, together with its accompanying Policies and Practice Directions.

Commissioner means the Information and Privacy Commissioner of Ontario.

Constitutional Question means a question regarding the constitutional validity or applicability of: legislation, a regulation, or a by-law made under legislation; a rule of common law; or a claim for a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario.

Deemed Refusal Appeal means an Appeal in which the sole issue is whether the Institution has responded to a Request within the time frame required by the *Act*.

Early Resolution means an early stage of the appeal process in which the IPC resolves or dismisses an Appeal or moves it to another stage of the appeal process.

Expedited Process means a single-person processing model that seeks to expedite the resolution of select types of Appeals in an efficient and effective manner, either by way of informal resolution or Inquiry.

Failure to Disclose Appeal means an Appeal in which the sole issue is whether the Institution has failed to disclose records in accordance with its decision to grant access.

Fee Appeal means an Appeal in which the sole issue is whether the Institution's fee, fee estimate, or fee waiver decision should be upheld.

FIPPA means the *Freedom of Information and Protection of Privacy Act*.

Index of Records means the documentation provided by an Institution when responding to a Request under the *Act* or when providing information to the IPC during an Appeal, and which includes:

- the name, type or description of each responsive record;
- the creation date of the record;
- whether the record was or is to be disclosed in whole or in part, or entirely withheld; and
- the exemption that has been claimed for each withheld record or part.

Inquiry means a formal process in which the IPC examines the issues raised by an Appeal and disposes of some or all of the issues by making an Order.

Institution means an organization subject to the *Act*.

Intake means the initial stage of the appeal process in which the IPC receives and reviews an Appeal for completeness and, if it meets the requirements of the *Act* and this Code, moves it to another stage in the appeal process.

IPC means the Office of the Information and Privacy Commissioner of Ontario.

Mediation means a stage of the appeal process in which a Mediator investigates the circumstances of an Appeal and attempts to effect a settlement of the issues.

Mediator means a person the Commissioner has authorized to investigate and try to settle an Appeal.

MFIPPA means the *Municipal Freedom of Information and Protection of Privacy Act*.

Notice of Appeal means a document prepared by the IPC confirming that an Appeal has been filed against an Institution's decision concerning a Request under the *Act*, and includes the names of the Parties, the IPC's file number, and the Institution's file number (if any).

Notice of Inquiry means a document prepared by the IPC setting out the issues in an Appeal and inviting Representations on those issues.

Order means a decision of an Adjudicator or other delegated decision-maker of the IPC disposing of some or all of the issues in an Appeal or making procedural determinations binding on one or more Parties.

Party (or collectively, **Parties**) means an individual or organization with a direct interest in an Appeal, including the Appellant, the Institution, another Institution, and the Third-Party Appellant.

Reasonable Search Appeal means an Appeal in which the sole issue is whether the Institution has conducted a reasonable search for records responsive to a Request.

Registrar means a person employed by the IPC who receives, reviews, and streams Appeals at the Intake stage.

Report of Mediator means a document prepared by a Mediator outlining background information and any issues in the Appeal which remain outstanding following an attempt to effect a settlement.

Representations means the documents, affidavits, other evidence and/or arguments a Party or Affected Person provides to an Adjudicator in an Inquiry, or as may otherwise be required by the IPC.

Request means the letter or form, together with the applicable fee, sent to an Institution by a person seeking access to a record or sent by an individual seeking access to or correction of their personal information under the *Act*.

Third-Party Appellant means an Affected Person who appeals a decision of an Institution regarding a Request by another person seeking access to a record.

Time Extension Appeal means an Appeal in which the sole issue is an Institution's decision to extend the time for responding to a Request beyond the time frame required by the *Act*.

Transfer Appeal means an Appeal in which the sole issue is an Institution's decision to transfer or forward the Request to another Institution.

PART II – THE APPEAL PROCESS

4. INITIATING AN APPEAL

- 4.01 A person who has made a Request under the *Act* may appeal any decision of the Institution concerning the Request.
- 4.02 An Affected Person who is notified by an Institution of a Request under the *Act* may appeal a decision by the Institution to grant the Request in whole or in part.
- 4.03 Where a person has made a Request, and the Institution does not give the person notice of its decision within the time frame required by the *Act*, the Institution is deemed to have refused the Request, and the person may submit a Deemed Refusal Appeal.
- 4.04 A person who wishes to appeal a decision shall send a written Appeal to the Registrar, by way of a completed **IPC Appeal form** or in any other form specified by the IPC.
- 4.05 The Appeal shall be made within thirty (30) days after the notice of decision was given by the Institution, in accordance with the *Act*.
- 4.06 An Appeal filed beyond the thirty (30) days' time limit for making an Appeal will not be accepted. However, if the time limit presents a "barrier" to the individual, as defined in the *Accessibility for Ontarians with Disabilities Act, 2005*, it may be extended for a period of time that is reasonably required in the circumstances to accommodate the individual for the purpose of making the Appeal.
- 4.07 The Appeal shall include:
- (a) the Appellant's legal name, address, email address, and telephone number;
 - (b) the Institution's name and the file number assigned by the Institution to the Request (if any);
 - (c) a copy of the Institution's decision;
 - (d) a copy of the Request;
 - (e) a brief explanation of the basis for the Appeal; and
 - (f) an acknowledgment and agreement by the Appellant that the Appeal will be processed in accordance with this Code.
- 4.08 The failure of the Appellant to comply with the requirements of section 4.07 may result in the IPC refusing to accept an Appeal.

- 4.09 In accordance with the *Act*, an Appellant shall pay the applicable Appeal fee as set by regulation at the time the Appeal is made.
- (a) An Appellant who requested access to, or correction of, his or her own personal information must pay a fee of \$10.00.
 - (b) An Appellant who requested access to general information must pay a fee of \$25.00.
 - (c) A Third-Party Appellant who is appealing an Institution's decision to disclose information relating to the Third-Party Appellant, is not required to pay an Appeal fee.
 - (d) Appeal fees cannot be waived and are generally non-refundable.
- 4.10 The Appeal fee may be paid by credit card through the **IPC's online Appeal submission and payment portal**, or by cheque or money order payable to "The Minister of Finance."
- 4.11 An Appellant is not required to pay an additional Appeal fee for any subsequent Appeal from a decision of an Institution concerning the same Request.
- 4.12 Counsel or an agent may file an Appeal on behalf of an Appellant. The IPC may require the Appellant to complete a **form authorizing counsel or the agent** to act as such for the purpose of the Appeal.

5. INTAKE

- 5.01 The Registrar reviews all Appeals received in accordance with the *Act* and this Code and may refuse to accept an Appeal that does not meet the requirements of the *Act* or this Code.
- 5.02 The Registrar will determine at which stage of the appeal process an Appeal will begin and will stream the Appeal accordingly.
- 5.03 Unless an Appeal or part of an Appeal is dismissed for lack of jurisdiction under section 6.01, a Notice of Appeal will be sent to the Parties.
- 5.04 In accordance with section 11 and the statutory authority contained in the *Act*, the Registrar may request, and if necessary, order, that copies of the records at issue and/or an Index of Records be produced to the IPC.

6. EARLY RESOLUTION

- 6.01 An Appeal assigned to Early Resolution is examined to determine if it falls within the jurisdiction of the IPC. If an Appeal or part of an Appeal is found to be outside of the IPC's jurisdiction, it will be dismissed and a letter confirming the same will be sent to the Appellant.
- 6.02 At Early Resolution, the IPC will contact the Parties to attempt to reach an informal resolution.
- 6.03 If an informal resolution is not possible, the IPC will decide if the Appeal should be dismissed or moved to another stage of the appeal process.
- 6.04 Before deciding whether to dismiss an Appeal, the IPC may invite submissions from the Appellant and/or the Institution.
- 6.05 The IPC will give the Appellant and the Institution written notice of any decision to dismiss an Appeal at Early Resolution.
- 6.06 Where an Appeal is not dismissed or resolved at Early Resolution, the Appeal will move to another stage of the appeal process.

7. MEDIATION

- 7.01 At Mediation, the IPC may contact the Parties to investigate the circumstances of the Appeal and attempt to:
 - (a) effect a settlement of all of the issues in the Appeal; or
 - (b) if all of the issues in the Appeal cannot be settled in a timely fashion, narrow the issues that move to the next stage of the appeal process.
- 7.02 Mediation may be conducted on a fixed date, through telephone or a virtual meeting platform, as determined by the Mediator in consultation with the Parties.
- 7.03 Where an Appeal is not fully settled in Mediation, a Report of Mediator will be prepared and sent to the Parties at the end of the Mediation.
- 7.04 If a Party believes that the Report of Mediator contains an error or omission, the Party may ask the Mediator to amend the report. Such a request shall be made in writing within the time period stipulated by the Mediator.
- 7.05 Where the Mediator decides not to amend the Report of Mediator in response to a request of a Party, the Mediator will advise the relevant Party of that decision.

- 7.06 Where the Mediator decides to amend the Report of Mediator, either at the request of a Party or on the Mediator's own initiative, the Mediator will send a copy of the amended report to the Parties.
- 7.07 If the Mediator does not receive a request to amend the Report of Mediator by the stipulated time, and if the Mediator does not revise the report on the Mediator's own initiative, the report is final and will be moved to the next stage in the appeal process.
- 7.08 Where an Appeal is fully settled in Mediation, the IPC will close the Appeal and notify the Parties.
- 7.09 Where the IPC advises an Appellant that further Mediation is not possible to fully settle the matter, and the Appellant responds that they do not want the Appeal to move to Adjudication or another stage of the appeal process identified by the IPC, the Appeal will be closed.

8. ADJUDICATION

- 8.01 At Adjudication, an Adjudicator may conduct an Inquiry to dispose of some or all of the issues in the Appeal.
- 8.02 The Adjudicator may consider the information contained in the Report of Mediator to determine whether the circumstances warrant conducting an Inquiry.
- 8.03 Without limiting the Adjudicator's authority to decline to conduct an Inquiry for any other reason, the Adjudicator may decline to conduct an Inquiry where:
- (a) there is no issue to adjudicate;
 - (b) the record is clearly not in the custody or under the control of an Institution;
 - (c) the IPC has previously issued a decision with respect to the same record;
 - (d) the request is for a record which will, by definition, be subject to an exemption;
 - (e) the mandatory exemption being claimed for a record has been upheld for this type of record in a comparable fact situation in previous IPC decisions;
 - (f) an exclusion in the *Act* will clearly apply to the record;
 - (g) the sole issue is reasonable search and the Appellant has provided no cogent basis for believing additional records may exist;

- (h) the issue is better dealt with in another forum; or
 - (i) the Appellant has failed or refused to engage in meaningful efforts to resolve the dispute prior to Adjudication, and the Adjudicator is of the opinion that such efforts would have resolved the Appeal or substantially narrowed the issues or the number of records, in which case the Adjudicator may decline to conduct an Inquiry in the areas identified.
- 8.04 Before deciding whether to dismiss an Appeal without conducting an Inquiry, the Adjudicator may invite submissions from the Appellant, the Institution, and/or any other Party.
- 8.05 If the Adjudicator decides to dismiss an Appeal without conducting an Inquiry, the Adjudicator will give the Appellant and the Institution written notice of such decision with reasons.
- 8.06 Generally, an Inquiry is conducted in writing by the Adjudicator. However, the Adjudicator may decide to conduct an oral Inquiry on a specified date as determined by the Adjudicator in consultation with the Parties.
- 8.07 In an oral Inquiry, the Adjudicator will send a Notice of Inquiry to the Parties, and the Adjudicator may invite the Parties to make Representations either in person, by telephone, or through a virtual meeting platform, in the presence of the other Parties.
- 8.08 If a Party is unavailable for an oral Inquiry on the date specified in the Notice of Inquiry, that Party must request an adjournment in writing to the Adjudicator, including the reasons for the request and alternate dates within the same general time period. The Adjudicator will rule on the request and may consult the other Parties before doing so.
- 8.09 If a Party is not present to provide Representations on the date set for the oral Inquiry, the Adjudicator may make an Order in the absence of Representations from that Party.
- 8.10 In a written Inquiry, the Adjudicator will send a Notice of Inquiry to the Party or Parties bearing the initial onus (the first Party), as determined by the Adjudicator, requesting Representations on the issues in the Appeal.
- 8.11 Upon receipt of the first Party's Representations, the Adjudicator may, if they consider it necessary, send a Notice of Inquiry to the responding Party or Parties (the second Party), requesting Representations on the issues in the Appeal.
- 8.12 Upon receipt of the second Party's Representations, the Adjudicator may, if they consider it necessary, send a Notice of Inquiry to the first Party, requesting Representations in reply.
- 8.13 In an Appeal, the Adjudicator may send a Notice of Inquiry to an Affected Person seeking Representations on issues concerning the Affected Person.

- 8.14 The Adjudicator may also notify and invite Representations from any individual or organization who may be able to present useful information to assist in the disposition of an Appeal.
- 8.15 At any point during an Inquiry, the Adjudicator may request further particulars from any Party regarding their Representations.
- 8.16 The Adjudicator may provide some or all of the Representations received from a Party to the other Party or Parties in accordance with **Practice Direction Number 7**.
- 8.17 A Party who chooses to submit Representations to the IPC shall do so by the date specified in the Notice of Inquiry and shall follow the requirements set out in **Practice Direction Number 2**.
- 8.18 A Party seeking a time extension shall make this request in writing, in accordance with the procedure in section 17, which the Adjudicator may consider.
- 8.19 If any Party does not submit Representations by the date specified in the Notice of Inquiry, or such other date as may be determined by the Adjudicator in response to a request for a time extension, then:
- (a) in the case of any Party other than the Institution, the Appeal may be deemed to be abandoned and the file will be closed in accordance with section 16 of this Code; or
 - (b) the Inquiry may proceed, and an Order may be issued in the absence of such Representations.
- 8.20 Unless an Appeal is settled, abandoned, withdrawn, or otherwise terminated, the Adjudicator will make an Order disposing of some or all of the issues in the Appeal.
- 8.21 The IPC will give the Parties written confirmation of any settlement, abandonment, withdrawal, or other termination of an Appeal and written notice of any Order made under the *Act*.
- 8.22 On making an Order disposing of some or all of the substantive issues in the Appeal, the IPC will publish the Order. The IPC may also publish an Order disposing of a procedural issue.
- 8.23 Institutions and organizations are generally named in an Order, whereas individuals are generally not named.

PART III – EXPEDITED PROCESS

9. EXPEDITED PROCESS – GENERAL

- 9.01 Where appropriate, the IPC may, in its sole discretion, waive or vary its processes and procedures or create specific processes and procedures to expedite the resolution of issues under appeal. If the IPC decides to move an Appeal through an Expedited Process, this will be communicated to the Parties at the commencement of the Appeal.
- 9.02 Appeals that may proceed through an Expedited Process include an Adequacy of Decision, Deemed Refusal, Failure to Disclose, Fee, Reasonable Search, Time Extension, Transfer, or other types of Appeals the IPC determines should use an Expedited Process. Generally, an Expedited Process for Appeals will follow **Practice Direction Number 13**.
- 9.03 For Appeals utilizing an Expedited Process, the IPC may abbreviate its usual processes and procedures, including (without limitation) by:
- (a) having a single decision-maker attempt to find a mutually agreeable resolution to the issues between the Parties, dismiss the Appeal, or issue an Order;
 - (b) shortening timelines for submissions and responses by the Parties;
 - (c) strictly adhering to established deadlines;
 - (d) conducting fixed-day informal dispute resolution;
 - (e) conducting an oral Inquiry;
 - (f) relying on affidavit evidence of the Parties; or
 - (g) issuing an Order without hearing further from the Parties.
- 9.04 The IPC's discretion to move an Appeal through an Expedited Process does not limit in any way the IPC's discretion to waive or vary its processes and procedures for other types of Appeals, in accordance with section 17.

PART IV – GENERAL

10. GENERAL POWERS OF THE IPC

- 10.01 The IPC may require to be produced to the IPC and may examine any record that is in the custody or under the control of an Institution, and may enter and inspect any premises occupied by an Institution.
- 10.02 The IPC may summon and examine on oath any individual who, in the IPC's opinion, may have information relating to the Appeal.
- 10.03 The IPC may require an Institution to produce to the IPC affidavit evidence in support of a position taken or an action undertaken by an Institution.
- 10.04 The IPC may create, issue, and require compliance with practice directions, policies, procedures, forms, guidance documents, rulings, codes of conduct, or any other document that the IPC deems necessary to give effect to the requirements of this Code, and to ensure the effective and efficient processing of Appeals under the Acts.

11. PROVIDING RECORDS TO THE IPC

- 11.01 Where records are at issue, the IPC requires copies of the records and may require an Index of Records to process an Appeal. In such cases, the IPC will send to the Institution a written request for the records and/or an Index of Records to be produced to the IPC and the date by which the records and/or the Index of Records are to be received.
- 11.02 Where an Institution fails to provide the records at issue, or any of them, within the specified time, the IPC may issue an Order requiring the Institution to produce the records to the IPC.
- 11.03 The IPC may also make an Order requiring the Institution to organize the records as directed, which may include a requirement to number the records, number the pages of records, provide legible copies, provide highlighted copies, and/or provide an Index of Records corresponding to the IPC's directions for organizing the records.
- 11.04 An Institution shall not in any way willfully obstruct or frustrate the IPC's ability to obtain accurate records and shall ensure that all affidavits provided in connection with an Appeal are truthful, complete, and accurate.

- 11.05 It is an offence under the *Acts* for anyone to:
- (a) alter, conceal, or destroy a record, or cause any other individual to do so, with the intention of denying a right to access a record or the information contained in a record;
 - (b) willfully obstruct the Commissioner in the performance of his or her functions;
 - (c) willfully make a false statement to, mislead, or attempt to mislead the Commissioner in the performance of his or her functions; or
 - (d) willfully fail to comply with an Order of the Commissioner or his or her delegates.

12. NEW DISCRETIONARY EXEMPTION CLAIMS

- 12.01 In an Appeal, an Institution may make a new discretionary exemption claim only within 35 days after the Institution is notified of the Appeal by the IPC. A new discretionary exemption claim made within this period shall be contained in a revised written decision sent to the person making the Request and to the IPC.
- 12.02 If the Appeal moves to Adjudication, the Adjudicator may decide in exceptional circumstances to consider a new discretionary exemption claim made after the 35-day period.
- 12.03 An Institution does not have an additional 35-day period within which to make a new discretionary exemption claim after it makes an access decision that resolves a Deemed Refusal Appeal.

13. CONSTITUTIONAL QUESTIONS

- 13.01 Where a Party intends to raise a Constitutional Question, the Party shall serve a notice of Constitutional Question on the Attorney General of Canada and the Attorney General Ontario and file the notice with the IPC.
- 13.02 A notice of Constitutional Question shall be in the **form posted on the IPC's website**, or in a similar form that contains the same information.
- 13.03 When filing the notice of Constitutional Question with the IPC, the Party shall also file proof of its service on the Attorneys General of Canada and Ontario.
- 13.04 A Party shall serve and file a notice of Constitutional Question as soon as the circumstances requiring it become known and, in any event, no later than 15 days after the day on which the Notice of Inquiry was sent to the Party.

- 13.05 The IPC will consider a Constitutional Question only if the Appellant or the other Party, as the case may be, complies with the time limit specified in section 13.04.
- 13.06 The IPC may at any time during an Appeal notify a Party that, in its opinion, a position taken by the Party in the Appeal raises a Constitutional Question. A Party receiving this notice shall within the time period specified by the IPC either:
- (a) comply with section 13.01; or
 - (b) provide the IPC with Representations as to why the Party believes a notice of a Constitutional Question is not required.
- 13.07 Before deciding whether an Appeal raises a Constitutional Question, the IPC may notify and invite Representations from the Parties.
- 13.08 If a Party fails to provide a notice of a Constitutional Question in accordance with section 13, the IPC will not address the question.
- 13.09 The IPC may share Representations on Constitutional Questions with all parties in accordance with this Code and **Practice Direction Number 7**.

14. STAYS

- 14.01 An Adjudicator may stay any provision of an Order, at any time, at the request of a Party or on the Adjudicator's own initiative.
- 14.02 Before deciding whether to stay a provision of an Order, the Adjudicator may notify and invite Representations from the Parties.
- 14.03 The stay of a provision of an Order may be for a specified time period, or until the occurrence of some specifically designated event.

15. RECONSIDERATION

- 15.01 IPC decisions are final. The IPC may only reconsider an Order or other decision where it is established that there is:
- (a) a fundamental defect in the Adjudication process;
 - (b) a jurisdictional defect in the decision; or
 - (c) a clerical error, accidental error or omission or other similar error in the decision.
- 15.02 The IPC will not reconsider a decision simply on the basis that:
- (a) new evidence is provided, whether or not that evidence was available at the time of the decision; or
 - (b) a Party disagrees or is dissatisfied with the result.
- 15.03 The IPC may reconsider a decision or an Order at the request of a person who has an interest in the Appeal or on the IPC's own initiative. The IPC will not consider more than one (1) reconsideration request per decision or Order, and will not consider a reconsideration request of a reconsideration Order.
- 15.04 A reconsideration request shall be made in writing to the IPC and consist of no more than ten (10) 8.5" x 11" (letter-size) single-sided pages in no less than 12-point font. The request must be received by the IPC within 21 days after the date of the decision or Order.
- 15.05 A reconsideration request shall include:
- (a) the relevant Order number and/or Appeal number;
 - (b) the reasons why the Party is making the reconsideration request;
 - (c) the reasons why the request fits within the grounds for reconsideration listed in section 15.01;
 - (d) the desired outcome; and
 - (e) a request for a stay, if necessary.
- 15.06 A reconsideration request does not automatically stay any provision of a decision or Order. Compliance with a decision or Order must occur within the specified time period unless the IPC or a court directs otherwise.
- 15.07 A reconsideration request does not preclude an individual from seeking other legal remedies that may be available.

- 15.08 All requests for reconsideration are subject to an initial review by the Assistant Commissioner and/or his/her delegate(s). If the IPC determines that a Party requesting reconsideration has not made a clear case that any of the grounds for reconsideration are established or has not met the requirements of sections 15.04 and 15.05, the reconsideration request will be denied without further deliberation. The Parties will be informed of the denial in writing.
- 15.09 If the request for reconsideration is not denied on initial review, the reconsideration will be assigned to the person who made the decision in question, unless for any reason they are unable to deal with the matter, in which case the IPC will assign another person to conduct the reconsideration.
- 15.10 The assignment of a request for reconsideration does not indicate that the grounds for reconsideration have been established. The determination of the merits of the reconsideration will be made by the individual assigned to consider it.
- 15.11 Before deciding whether to grant a reconsideration on its merits, the IPC may notify and invite Representations from the Parties.
- 15.12 The final decision to grant or deny a reconsideration on its merits will be made in writing in the form of an Order with a copy sent to the Parties.

16. "ON HOLD" AND ABANDONED APPEALS

- 16.01 The IPC may, on written request of a Party or at its own discretion, and with notice to the Parties, place an Appeal "on hold" for a limited period of time due to:
- (a) the documented illness of a Party rendering them incapable of participating in the Appeal process;
 - (b) a court proceeding related to the Appeal, which may include awaiting the results of a court decision in a related matter;
 - (c) the existence of multiple active Appeals from the same or related Appellant(s); or
 - (d) the failure of an Appellant or Third-Party Appellant to provide current contact information to the IPC and the inability of the IPC to contact them.

- 16.02 An Appeal referred to in section 16.01(d) will remain “on hold” until the Appellant or Third-Party Appellant contacts the IPC or 30 days have passed without any response from the Appellant or Third-Party Appellant from the IPC’s last attempt to contact them, whichever occurs first.
- 16.03 If the 30 days have passed without any response from the Appellant or Third-Party Appellant, the IPC may deem the Appeal to be abandoned and proceed to close the Appeal without further notice to the Appellant or Third-Party Appellant, as the case may be. The IPC will notify the other Parties in writing that the Appeal is closed.
- 16.04 Except as otherwise provided for in this Code, where an Appellant or Third-Party Appellant does not respond to the IPC by the deadline specified in correspondence sent to them, the IPC will attempt to contact them in writing. After two failed attempts to contact them, the IPC may deem the appeal to be abandoned without further notice to the Appellant or Third-Party Appellant. The IPC will notify the other Parties in writing that the Appeal is closed.

17. VARYING THE PROCESS

- 17.01 The IPC may in its discretion waive or vary any of the procedures prescribed or adopted by or under this Code, including any requirement or specified time period where the IPC considers it advisable to secure the fair, just, and expeditious resolution of the proceedings.
- 17.02 A Party who wishes the IPC to waive or vary any of the procedures prescribed by or under this Code shall submit a request in writing to the IPC staff member assigned to the Appeal.
- 17.03 A request to vary the process should include all relevant information in support of the request, including:
- (a) the Appeal number;
 - (b) the reasons the Party is making the request;
 - (c) any prejudice to the Party if the request is not granted; and
 - (d) the reasons any prejudice under paragraph (c) outweighs any prejudice to the other Party or Parties to the Appeal.
- 17.04 Before deciding whether to vary a process in a manner that may significantly impact the rights and interests of the Parties, the IPC may notify and invite Representations from the other Parties within a specified time period.

- 17.05 Failure to provide a response within the specified time period will be deemed to constitute an absence of objection by the other Party.
- 17.06 Where the IPC decides to grant or decline a request to vary the process, the IPC will issue a written decision to the Parties.
- 17.07 At any time during the appeal process, the IPC may move an Appeal to another stage in the appeal process that the IPC determines will be most effective in securing the fair, just, and expeditious resolution of the proceedings.

18. COMPUTATION OF TIME

- 18.01 Where the *Act*, this Code, or an Order or decision of the IPC establishes a timeframe:
- (a) the days are calculated as calendar days, and the deadline to complete an action (or actions) is deemed to be 5:00 p.m. local Toronto, Ontario time on the due date;
 - (b) where there is a reference to a number of days between two events, they are counted by excluding the day on which the first event happens and including the day on which the second event happens; and
 - (c) where any deadline falls on a day when the IPC's office is not open for business, the deadline is deemed to be on the next day that the IPC's office is open.

19. ABUSE OF PROCESS / VEXATIOUS APPELLANT

- 19.01 The IPC may make such Orders or give such directions in an Appeal as it considers proper to prevent abuse of its processes.
- 19.02 Where the IPC finds that an Appellant has persistently instituted vexatious Appeals or conducted an Appeal in a vexatious manner, the IPC may find that Appellant to be a vexatious litigant.
- 19.03 Where an Appellant is found to be a vexatious litigant, the IPC may, at any stage of the IPC's appeal process, close an Appeal made by that Appellant on the basis that it is an abuse of process, and/or require that the Appellant obtain permission from the IPC to take further steps or make further Appeals, subject to any conditions imposed by the IPC.

20. USE OF ARTIFICIAL INTELLIGENCE

20.01 Where a Party makes Representations to the IPC and relies on artificial intelligence (AI) in the preparation of those Representations, the Party must disclose to the IPC:

- (a) that AI was used;
- (b) the type of AI used; and
- (c) how AI was used.

20.02 Where AI is used to prepare Representations, Parties must review the accuracy and content of legal references or analysis contained in their Representations that are created or generated by AI and certify in writing to the IPC that they have completed that review. When referring to jurisprudence, statutes, policies, or commentaries in Representations, Parties must use only well-recognized and reliable sources.

Code of Procedure

for appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*



Information and Privacy
Commissioner of Ontario

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