

Introduction

1. General introduction

The Tribunal and Dispute Resolution Division of the Office of the Information and Privacy Commissioner of Ontario is committed to enhancing the trust of Ontarians that their privacy and information rights will be respected. In order to assist in achieving this vision, the Tribunal aspires to respond to appeals and complaints in a fair, timely, and meaningful manner.

The Supreme Court of Canada has recognized the power of tribunals to control their own procedures, as long as they are fair, and within the bounds of any specific rules set out in legislation. As set out in *Prasad v. Canada (Minister of Employment & Immigration)*, [1989]1 S.C.R. 560:

“As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.”

The IPC’s governing legislation in no way prohibits the adoption of policies and procedures needed to manage appeals and complaints in a cost and time-efficient manner to avoid abuse of process and ensure reasonable expenditure of public dollars. For example, former Commissioner Wright’s Order M-618 established that:

- (a) The IPC is not required to wait until actual abuse has occurred and damage has been done, but may invoke reasonable measures to regulate its processes to minimize or eliminate the potential for abuse; and
- (b) The volume of records requested, and not just the number of requests or appeals, is a proper consideration in exercising authority to minimize the potential for abuse.

The Divisional Court in *Riley v. Ontario (Information and Privacy Commissioner)* dismissed an application for judicial review of Order M-618 brought by the requester in a brief endorsement, noting:

“In our view, the Commissioner had both statutory and common law authority to control the kind of abuse of process which he found in this case. The Commissioner’s order did not affect the substantive rights of the applicant. The order was consistent with the objects and purposes of the Act and was designed to prevent those objects and purposes from being frustrated by the applicant’s abuse.”



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The IPC may, in its sole and absolute discretion, depart from any practice or provision in the Tribunal and Dispute Resolution Division Policies where it is just and appropriate to do so.

2. General Scope

Subject to any exceptions noted in each policy, the policies contained herein apply to all appeals and complaints under the *Municipal Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Act*, and all complaints under the *Personal Health Information Protection Act, 2004* and Part X of the *Child, Youth and Family Services Act, 2017*.

3. General Definitions

The following definitions are used in the policies contained herein:

“**abandoned file**” means a file with the IPC that has been deemed abandoned and is immediately thereafter closed under the Abandoned Files Policy.

“**Acts**” means collectively M/FIPPA, PHIPA, and CYFSA.

“**appeal**” means an appeal commenced by a requester under M/FIPPA.

“**appellant**” means a requester who has commenced an appeal with the IPC under M/FIPPA.

“**ARO**” means an Adjudication Review Officer.

“**complaint**” means a complaint commenced by a complainant regarding an access to personal information request under PHIPA or CYFSA, or regarding a breach of privacy under M/FIPPA, PHIPA, or CYFSA.

“**complainant**” means a person who has commenced a complaint with the IPC regarding an access to personal information request under PHIPA or CYFSA, or regarding a breach of privacy under M/FIPPA, PHIPA, or CYFSA.

“**CRIS**” means the IPC’s Client Records Information System.

“**CYFSA**” means Part X of the *Child, Youth and Family Services Act, 2017*.

“**file**” means an appeal, third-party appeal, or complaint file at the IPC, as the circumstance requires.

“**institution**” means, collectively, an “institution” as defined in M/FIPPA, a “health information custodian” as defined in PHIPA, and a “service provider” as defined in CYFSA.

“**IPC**” means the Office of the Information and Privacy Commissioner of Ontario.

“**M/FIPPA**” means, collectively, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Act*.

“**original requester**” means the requester who initially requested access to information from an institution, in the context of a third-party appeal.

“**party**” means, collectively, an appellant, third-party appellant, original requester, or complainant.

“**person**” means an individual, organization, corporation, or any entity. “**PHIPA**” means the *Personal Health Information Protection Act, 2004*.

“**requester**” means a person who requested access to information from an institution under M/FIPPA, or access to personal information from an institution under PHIPA, or CYFSA.

“**third-party appeal**” means an appeal commenced by a third-party appellant under M/FIPPA.

“third-party appellant” means a party, other than the original requester, who has appealed an institution’s decision to grant access to records in whole or in part under M/FIPPA.

“Tribunal” means the Tribunal and Dispute Resolution Division of the IPC.

All references to legislation refer to those versions of the legislation as may be amended and that are in force and applicable at the time the legislation is applied to any current and future circumstance, and includes all regulations and successor legislation.

4. General Responsibilities

The Commissioner is responsible for supporting the Tribunal’s Assistant Commissioner, Directors, and Managers by providing them with direction as required regarding their obligations pursuant to these policies, and what is expected of them generally. The Commissioner also is responsible for approving this policy and all other relevant policies hereunder, including approving any updates to these policies.

The Tribunal’s Assistant Commissioner, Directors, and Managers are responsible for ensuring that relevant staff are aware of and trained on these policies and any accompanying guidelines, procedures, and protocols.

All staff within the Tribunal are required to follow these policies as applicable.

5. Maintaining Detailed Records

When any action on a file is taken pursuant to the policies contained herein, staff shall make the appropriate notation in CRIS. All staff are also responsible for maintaining in CRIS detailed records of their interactions and attempted interactions with appellants, third-party appellants, or complainants (e.g., emails, notes of telephone conversations, and notes of in-person discussions) in order to document any action being taken under these policies.

Staff are reminded that the retention of such records assists in any legal proceeding that may be necessary to support this policy, and is of assistance if a complaint is submitted regarding the conduct of staff or the application of this policy.