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2. ACCESS REQUEST STAGE
2.4



IPC Practices

PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO
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Drafting a Letter Refusing Access to a Record

When a municipal or provincial institution receives a request for access to information, the head of that institution is required to respond, in writing, within 30 days. The response must indicate whether access to all or part of the information will be granted.

When access is denied, the decision letter should provide the requester with a sound understanding of why some or all of the information has been denied.

If a thorough explanation is provided, the chances of an appeal may be greatly reduced. An appeal can be a time-consuming process for an institution, involving an investigation, mediation and/or an inquiry. It is therefore in the institution's best interest to ensure the decision letter is drafted with care, in accordance with legislative requirements.

Where the requester proceeds with an appeal, a proper decision letter is essential to the efficient processing of the appeal. If the original decision letter is incomplete, the institution will be required to take time to produce a proper decision letter. Drafting a correct decision letter at the outset not only saves the institution time at the start of the appeal process, but speeds up the process for all parties involved.

To assist you in preparing a decision letter that meets the legislative requirements, please follow these two key steps:

1. Reviewing the Record(s)

The information requested may involve several records. Each record must be carefully reviewed to determine whether:

- (a) access will be granted or denied to the whole record; or
- (b) access will be granted to the record with a part or parts severed.

During this review, reasons for denying access to a record or any part of it must be clearly established. These explanations can then be conveyed to the requester in the decision letter.

2. Drafting Procedure

A sample decision letter refusing access to records is attached (page 3), along with a decision letter checklist (page 2). Following is a description of the components of a proper decision letter:

- (a) Provide an index of records. Because a request may involve several records, an index of all involved records must be provided in the decision letter.

The IPC has found that providing a list of records satisfies some appellants who decide not to proceed further with an appeal. Such individuals initiate their requests for the sole purpose of finding out whether a specific record is or is not contained in the information they wish to access.

- (b) Assign a document number to each record and provide a general description of each record. The description should provide enough detail so that the requester has an understanding of the type of information contained in it.



Feel free to copy this list for your day-to-day reference.

CHECKLIST OF REQUIRED INFORMATION FOR A LETTER REFUSING ACCESS TO RECORDS	
___ Index of records	___ For each record or part of a record refused, the reason the provision applies to the record
___ Document number for each record	___ Fee information
___ Description of each record	___ Name and position of the decision-maker
___ Indication for each record whether access granted or refused or whether part or parts of the record severed	___ Notice that the requester may appeal the decision to the IPC within 30 days
___ For each record or part of a record refused, the provision of the <i>Act</i> under which access refused	___ Notice that an appeal should include: the file number assigned by the institution, a copy of the decision letter, a copy of the original request, and the appeal fee.
___ Copies of the sections of the <i>Act</i> cited above	

CONTINUED FROM PAGE 1

(c) For each record, indicate whether access has been refused or granted for the whole record or whether access has been granted with a part or parts severed.

Where one record has several parts severed, the index may list each page separately. If there is more than one severance on a page of the record, each severance must be dealt with separately. (See document 3 in the sample index.)

(d) For each record or part of a record that is refused, the specific provision of the *Act* under which access is refused.

To assist the requester and provide him/her with more information, attach copies of the sections of the *Act* that are cited.

(e) For each record or part of a record that is refused, explain why the provision applies to the record. This explanation, along with the

general description of the record, should enable the requester to understand why the information cannot be disclosed.

(f) Provide the requester with information about the charging or waiving of a fee in connection with the request.

(g) Provide the name and the position of the person responsible for making the decision.

(h) Include a paragraph informing the requester that he/she can appeal the decision to the IPC within 30 days. Let the requester know that an appeal should be accompanied by:

- the file number assigned by the institution to the request;
- a copy of the decision letter;
- a copy of the original request for information;
- information about the appeal fee.

MORE INFORMATION

The specific statutory obligations of institutions in this regard are more specifically set out in section 29 of the *Freedom of Information and Protection of Privacy Act* and section 22 of the *Municipal Freedom of Information and Protection of Privacy Act*.



SAMPLE DECISION LETTER

FINAL DECISION: PARTIAL ACCESS GRANTED (NO FEES INVOLVED)

February 25, 1992

Ms. Jane Public
123 Your Street
Your Town, Ontario
X1Y 2Z3

Dear Ms. Public,

Re: Our File No. 92-007

Thank you for your letter which was received by our office on January 21, 1992.

We have made the following decision in response to your request for information made under the *Freedom of Information and Protection of Privacy Act*.

You requested information about construction at the Ultrasecure Detention Centre. Access to a number of these records is being granted, while exemptions are being claimed for others.

I am attaching an "Index of Records" relating to your request. It includes a general description of each of the records you requested and indicates whether access is being granted or denied. Where access is either granted in part or denied, the "Section(s) Applied" column indicates which section of the *Act* is being used to exempt all or part of that record. If an exemption is being applied, refer to the "Comments/Explanations" column.

I am enclosing copies of records to which you have been granted access. Where only partial access has been granted, we have severed (not released) the exempted portions. I have also enclosed passages from the *Act* to explain why those exemptions have been applied.

Section 57(1) of the *Act* authorizes charging fees in connection with requests for access to government-held information. In this case, fees could be charged for photocopying. However, due to the limited number of pages, fees are being waived as authorized by section 8(2) of Ontario Regulation 516/90.

I am responsible for the decision to deny access to information and to sever portions of any records to which only partial access was granted. You may ask for a review of this decision within 30 days of receiving this letter by writing to: The Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8, Tel.: 1-800-387-0073.

If you decide to request a review of this decision, please provide the Commissioner's office with the following: the file number listed at the beginning of this letter; a copy of this decision letter; a copy of the original request for information you sent to our institution; and the reasons why you believe the records exist (if the decision was that no records exist).

In addition, you must send an appeal fee to the Commissioner's office. If your request was for your personal information, the appeal fee is \$10.00. The appeal fee for all other requests for information is \$25.00. Please include the fee with your letter of appeal — appeal fees should be in the form of either a cheque or money order, payable to the Minister of Finance.

Yours truly,

Frank Open Government
Freedom of Information and Privacy Co-ordinator

Encl.



Doc. No.	General Description	Page/Para No.	Release Yes/No	Section(s) Applied	Comments/Explanations
1	Memo dated April 10, 1991 Smith to Jones, re Hydro installation (3 pages).	All	Y		
2	Plan showing building and grounds of detention centre dated Nov. 11, 1988. Also showing proposed alterations (1 page).	Page 1	N	14(1)(j) & 14(1)(k)	Since this record shows entrances and exits to buildings and grounds, and other security-sensitive information, its release could reasonably be expected to facilitate escapes and to jeopardize the security of the detention centre, so both exemptions apply. As this Ministry's policy is to prevent such security lapses, the head is exercising his discretion to apply the exemption and to withhold this record in its entirety.
3	Memo dated Sept. 4, 1989, Smith to Jones, outlining costs of upgrades for security features (3 pages).	Pages 1&2	Y		
3	As above	Page 3, Para.1,2&3	Y		
3	As above	Page 3, Para.4	N	14(1)(j) & 14(1)(k)	This paragraph describes security features and has been severed (not released) for the same reasons as outlined above regarding record 2.
3	As above	Page 3, Para.5	N	13(1)	Disclosure of this paragraph would reveal the advice of an employee of this Ministry. The head is exercising his discretion to exempt this paragraph because the information is sensitive and premature release could jeopardize security.

IPC Practices

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If you have any comments regarding this publication, wish to advise of a change of address or be added to the mailing list, contact:

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