



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Instructions for Written Inquiries
under the
Personal Information Protection Act

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You have been invited to participate in a written *inquiry* under the *Personal Information Protection Act* (“PIPA”) conducted by the Office of the Information and Privacy Commissioner (“OIPC”). An inquiry is an adjudicative process in which an *adjudicator* receives submissions from applicants, organizations and, if applicable, other participants, in order to consider and determine all questions of fact and law with respect to the issues in dispute. To help you get ready, we have prepared answers to the most commonly asked questions about written inquiries.

If you have further questions regarding the inquiry process after reading this information, please contact the Registrar of Inquiries, directly at 250-356-7953 or through the toll-free Enquiry B.C. line 604-660-2421 (Greater Vancouver Area) or 1-800-663-7867 (elsewhere in BC)..

Words in *italics* are defined at the end of this document. Other terms are defined in PIPA.

1.0 Why Are Inquiries Held?

Among other things, PIPA provides an avenue for review by the OIPC of an organization’s decision about whether to grant an individual access to his or her *personal information* and for investigation of a complaint about the organization.

During a review the *Portfolio Officer* attempts to mediate a settlement between the organization and the individual (“*applicant*”) who requested the review or made the complaint. If the participants cannot settle their differences, the Commissioner or his delegate (“*adjudicator*”) may decide the matter through an inquiry. The decision to hold an inquiry is discretionary.

After completing the inquiry, the adjudicator usually makes an order. The adjudicator may, for example, order the organization to:

- withhold or to disclose the personal information requested by the applicant
- reconsider its decision or
- correct personal information under its control

2.0 Why is the Inquiry Held in Writing Rather than Orally?

Since most inquiries involve the straightforward application of sections of PIPA, and the factual issues are clearly defined, inquiries are usually written rather than oral. The adjudicator determines whether to hold a written or oral inquiry in any particular case.

3.0 Who participates?

The applicant and the organization involved will each be invited to make a submission in the form of argument and evidence. The adjudicator may also invite third parties or other *appropriate persons* who have a direct interest in the inquiry issues to participate in the inquiry.

In addition, there may be other organizations, agencies or individuals having a broader interest in, or knowledge of, the implications of an issue or the ability to provide a different perspective. The adjudicator may invite these organizations, agencies or individuals to make submissions in the inquiry as *intervenors*.

4.0 What happens during a written inquiry?

The procedures followed during a written inquiry are similar to some court procedures, but a written inquiry is less formal.

A written inquiry involves sending a written submission to the OIPC and exchanging copies of your submissions with the other participants in the inquiry. You are not required to appear in person in front of the adjudicator.

You may, at your own expense, have a lawyer or another person represent you in the inquiry.

The following is an outline of what is involved at each stage of a written inquiry.

4.1 The OIPC Distributes the Notice of Inquiry & Fact Report

The Registrar of Inquiries, who is responsible for the administrative aspects of all inquiries and other applications to the adjudicator, sends a Notice of Inquiry and the Portfolio Officer's Fact Report to all participants, together with a list of participants in the inquiry and their contact information. These documents are described below. If a third party or other appropriate person is participating in the inquiry, then the Registrar may, if this has not already been done, send that party notice under s. 48(1)(b) of PIPA and a copy of the applicant's original request for review of the organization's decision. If the inquiry is about a complaint, the Registrar may send a copy of the complaint to any appropriate persons. The registrar will also provide the participants with instructions on the number of copies of their submissions they are to provide to the OIPC and to each other.

4.1.1 Notice of Written Inquiry

The Notice of Inquiry generally contains the following information, as appropriate to the specific inquiry:

- names of the participants¹ in the inquiry
- the sections of PIPA under consideration
- the issues to be decided in the inquiry
- the inquiry's date
- who has the *burden of proof*, where applicable
- the deadlines for the receipt and exchange of initial and reply submissions

Any objections to the notice of inquiry must be received by the OIPC in writing within three days of the date of the notice being issued and must be copied concurrently to the other parties.

4.1.2 Portfolio Officer's Fact Report

The Portfolio Officer responsible for the matter will prepare a statement of facts for distribution to all participants. This Fact Report outlines these things:

- the chronology of the request
- the review and inquiry processes
- the facts and the issues in dispute
- any factual outcomes of mediation, such as:
 - changes in the issues or the exceptions applied
 - changes to the scope of the records in dispute and
 - changes to fees the organization assessed

The Fact Report does not include any information about offers or attempts to settle the matter during mediation before the inquiry process. Any objections to the Fact Report must be received by the OIPC in writing within three days of the fact report being issued and must be copied concurrently to the other parties.

4.2 Initial and Reply Submissions

The participants must provide the requested number of paper copies of their initial and reply submissions to the OIPC **on or before** the dates set out in the Notice of Inquiry, under "Schedule for Submissions".

Participants must also, **at the same time**, provide the appropriate number of paper copies of their initial and reply submissions **to each other, on or before** the dates set out in the Notice of Inquiry, under "Schedule for Submissions". Participants may contact the registrar for guidance on this process.

¹ See para. 6.1 below for more information.

Where a party's identity is in issue or otherwise to be kept private from other participants, the OIPC will—in these cases only—accept and exchange submissions for all parties. In these cases, participants will receive additional instructions on the number of submissions they are to provide to the OIPC.

Initial submissions must deal only with those issues set out in the Notice of Inquiry and should include evidence and written argument. Initial submissions must not raise any new issues or exceptions.

Participants may reply to each other's initial submissions. A reply submission must not raise any new issues or contain any new facts (except in response to facts in other participants' initial submissions).

The inquiry is then closed. After the inquiry is closed, the registrar will not accept any further submissions from any participant.

A participant who does not deliver an initial submission will not be allowed to deliver a reply submission, except under extenuating circumstances. The registrar may also not accept late submissions, except under extenuating circumstances. In such circumstances, the participant must make an application in writing to the registrar, with reasons, requesting permission to make a reply submission or a late submission, as the case may be.

Participants must copy each other, at the same time and in a timely manner, on any correspondence with the OIPC relating to the inquiry, such as requests for more time to make submissions or objections about procedural issues relating to the inquiry. The OIPC must receive any procedural objections before the registrar closes the inquiry.

Where participants have legal counsel, those legal counsel are expected to provide their clients with copies of inquiry documents.

The adjudicator or registrar may, with the consent of the parties or where appropriate and reasonable in the circumstances and at the written request of a participant, allow participants more time to make submissions.

See below for further details on the contents of submissions.

4.3 Decision

In order to consider the case and make a decision, the adjudicator is provided with the following:

- the applicant's original access or correction request; the organization's response; the applicant's request for review or complaint; and any other relevant correspondence
- the Notice of Inquiry

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- the Portfolio Officer's Fact Report
 - the participants' initial and reply submissions
 - copies of any records in dispute and
 - other material or correspondence relevant to the inquiry

The adjudicator may request further submissions where the adjudicator considers more information is necessary or desirable.

After considering the material, the adjudicator issues a written decision, or "order", to the participants, which includes an order made under s. 52 of PIPA. Among other things, PIPA authorizes the adjudicator to order the organization to disclose records or to reconsider its decision. The adjudicator may also confirm the organization's decision.

The organization has 30 business days to comply with the adjudicator's order, unless an application for judicial review is filed in the British Columbia Supreme Court within that time period. Section 56(1)(f) of PIPA makes a failure by any person or organization to comply with an order by the adjudicator an offence which may result in a fine (s. 56(2) of PIPA).

After the adjudicator issues an order, the Registrar will first provide each participant with a copy and then make the order available to the public by publishing it on the OIPC website.

5.0 Preparing for a Written Inquiry

How you prepare depends largely on your role, the nature of the inquiry and who has the burden of proof in the inquiry. The burden of proof will, where applicable, be described in the Notice of Inquiry.

Participants are encouraged to consult previous orders to determine how similar inquiries have been decided in the past and on what basis. Orders are published on our website, arranged by the year in which they were issued. The OIPC website also has a sectional index. It lists, for each of PIPA's sections, the orders that have considered that section. There are also other online resources which provide access to the Commissioner's orders, links to orders issued by the Information and Privacy Commissioners for other jurisdictions and decisions made by courts which may be relevant.

5.1 Burden of Proof

When PIPA imposes a burden of proof on a party in an inquiry, it means that party must provide evidence and argument proving that the party's position about the issue in dispute is the correct one.

Section 51 of PIPA sets out the following burden of proof:

- 51 At an inquiry into a decision to refuse an individual
- (a) access to all or part of an individual's personal information,
 - (b) information respecting the use or disclosure of the individual's personal information, or
 - (c) the names of the sources from which a credit reporting agency received personal information about the individual,

it is up to the organization to prove to the satisfaction of the commissioner that the individual has no right of access to his or her personal information or no right to the information requested respecting the use or disclosure of the individual's personal information or no right to the names of the sources from which a credit reporting agency received personal information about the individual.

In all other cases each party has an obligation to bring forward evidence and argument that justify its position on the issue.

5.2 Suggestions for Preparing Submissions

Each participant makes an initial submission. All participants make their initial submissions at the same time.

A participant's initial submission should contain *evidence* and argument that support its case. The argument should include the participant's interpretation of how the relevant sections of PIPA apply in the circumstances and explain how the evidence presented supports the participant's position. Initial submissions must deal only with issues stated in the Notice of Written inquiry.

It is not necessary to reproduce the tests from past orders for applying exceptions to disclosure. Parties may refer to relevant orders in this regard.

Evidence is comprised of assertions of fact on which a participant relies and is generally submitted through *affidavits* or other documents containing factual information that can be used to support a participant's argument. While an individual participant is not required to submit evidence in affidavit form, participants who are represented by legal counsel are generally expected to do so. If a participant wishes to rely on evidence from another person, as opposed to a document, the evidence from that person should generally be provided through an affidavit.

Hearsay evidence is evidence given in the inquiry by one person about what another person said. Because an inquiry results in the adjudicator making a final order that disposes of the issues, it is not generally appropriate for participants to submit affidavits made on information and belief or that include hearsay evidence. Wherever possible, the person with direct knowledge of the facts, or

who made the statements, should be the one to attest to those facts or statements.

5.3 Guidance on Content and Form of Submissions

5.3.1 Mediation Material

“Mediation material” refers generally to information or communications that relate to offers or attempts to settle the matter during mediation, including any opinions on the merits of the matter made by the Portfolio Officer conducting the mediation.

To preserve the confidentiality of the mediation process, a participant may not, without the written consent of all other participants, include or refer to, in any submission:

- records or information generated during, and related to, the mediation process
- records or information provided by any party related to the mediation process
- records or information referring or relating to attempts to settle the issues before the inquiry began

If the participant has not obtained written consent, then the Registrar will remove this material from the submission and return it to the submitting participant. The adjudicator will not consider it in reaching a decision and issuing an order.

“Mediation material” does not include information related to the factual outcomes of mediation, such as changes in the issues or the exceptions applied; changes to the scope of the records in dispute; and changes to or waivers of fees assessed by the organization.

5.3.2 Reference material

A participant must provide a list of orders, court cases, statutes and other legal authorities mentioned in the participant’s submission and must cite the sources relied on. In addition to this list, the participant must provide the following:

- For all published Canadian authorities referred to, the full name of the order, decision or legislation referred to and a proper citation for either QuickLaw, CanLII (Canadian Legal Information Institute public website located at www.canlii.org) or the neutral citation assigned to the order or decision by the issuing body
- For all unpublished or foreign authorities referred to, a copy of the order, decision or legislation

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- For all other material referred to, including books, articles, and academic journals, a copy of the relevant section, chapter or article and complete bibliographic information indicating the title, author, publisher and date of publication

The submitting party is responsible for ensuring that the materials and citations referred to are accurate and complete.

5.3.3 Format of Submissions

In addition to the required number of paper copies, participants must, with their reply submissions, provide the OIPC with one electronic copy of all submissions and affidavits made by the party in the inquiry, in MS Word on a diskette, CD-ROM or DVD disc, labelled with the OIPC file number and the participant's name. Any *in camera* material must be clearly marked in both the paper and electronic copies in accordance with our instructions on submission of *in camera* material – see below. The OIPC will make an exception to this for those participants who do not have the technical means to comply.

We do not at this time accept submissions sent by e-mail and we no longer accept submissions by fax. We also do not accept electronic copies of submissions in .pdf or an equivalent format.

Initial and reply submissions must be:

- double-spaced
- no longer than 30 pages each (but excluding affidavits)
- in 12-point type or clear and legible handwriting
- divided into numbered paragraphs

Parties must also provide a summary of no longer than one page for each submission.

Submissions, affidavits and any copies of relevant authorities must be 3-hole-punched and must not be bound, cerloxed or placed in plastic covers.

5.4 Submissions Made In Camera

A submission made *in camera* means that the material is submitted privately and kept from the other participants in the inquiry and the public. *In camera* material will also not be disclosed in an order. A participant may ask an adjudicator to receive part or all of a submission on an *in camera* basis. The adjudicator may accept *in camera* material if it discloses the contents of a record in dispute in the inquiry or discloses information that might be subject to an exception under PIPA.

A participant who wishes to submit *in camera* material must explain in writing why the material submitted *in camera* should be accepted as such by the adjudicator and should limit the *in camera* material to the absolute minimum necessary to protect the information in question.

An adjudicator will review the *in camera* material and consider the participant's written explanation and may request further information from the participant, before making a final decision about whether the *in camera* material will be accepted.

As necessary, the registrar will provide further instructions to the participant about the appropriate number and form of copies of the submission that the participant must provide to the other participants in the inquiry and to the OIPC.

How to submit in camera material to the OIPC for approval

If a participant intends to submit *in camera* material in the inquiry, the participant must, no later than five business days before the due date for initial submissions, provide to the registrar the following:

- a) one copy of its initial submission containing any material that is submitted *in camera*
- b) a separate written submission and any supporting authority explaining why the material is properly submitted *in camera*.

The material proposed for *in camera* submission must be clearly marked, for example, by bolding, underlining or boxing the *in camera* text or by highlighting the *in camera* text in a different colour. It is not acceptable to provide one complete (unsevered) copy and one severed copy of the material being submitted *in camera*. If the material is submitted *in camera* with respect to only some of the other participants in the inquiry, then this must also be clearly indicated.

Please note that if the only *in camera* material that the organization wishes to submit is the information or records in dispute, it is not necessary to submit this *in camera* material for pre-approval to the OIPC.

5.5 Standards for Preparation of Records Submitted in Inquiry

Organizations must submit copies of any records in dispute with their initial submissions and must prepare them as follows:

- the records must be numbered clearly, beginning with the number 1, in the top right or lower right corner of each page

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- information and pages that have been severed and withheld must be clearly marked, for example, by bolding, underlining or boxing the withheld text or pages or by highlighting the withheld text or pages in a different colour; it is not acceptable to provide one complete (unsevered or unmarked) copy and one severed copy of the records in dispute
 - the sections and subsections of the PIPA exceptions the organization relied on must be clearly indicated on the withheld page or next to the severed information, as the case may be

Organizations must also, wherever practicable, provide a table listing the records in dispute by record or page number and listing the sections of PIPA applied, by record or page number.

6.0 Other Questions

6.1 *Will my name be disclosed?*

The Notice of Inquiry, Portfolio Officer's Fact Report and the order name the organization and any intervenors. These documents do not name the applicant. An individual applicant's identifying information may also be severed from the request for review or complaint sent to appropriate persons or intervenors. In appropriate cases, the organization may also be kept anonymous (for example, see Order P06-01).

6.2 *Are written submissions public documents?*

We do not make written submissions available to the public. We refer any request for a copy of a submission to the participant who prepared it.

6.3 *Are orders final and binding?*

Orders are final and there is no further avenue of appeal under PIPA. A participant other than an intervenor can apply to the Supreme Court of British Columbia for judicial review of the order.

The organization must comply with the order within 30 business days after the date of the order, unless an application for judicial review has been filed within that time.

7.0 Definitions of Terms

Note: *The definitions included below are meant to assist the reader of this document and do not represent a complete or binding interpretation of meaning generally. Where terms are defined in PIPA, the definitions in PIPA shall prevail over this document.*

adjudicator: an individual to whom the Commissioner has delegated conduct of an inquiry or other matter.

affidavit: A written statement of facts, the truth of which has either been sworn or affirmed before a Commissioner for taking Affidavits in British Columbia. Lawyers, notaries, Government Agents and Municipal City Clerks are Commissioners for taking Affidavits in British Columbia.

applicant: an individual who makes a formal request to the adjudicator for a review of a decision by an organization to deny the individual access to his or her personal information under the control of an organization

appropriate person: any individual or organization with a direct interest in the issues in dispute that the adjudicator considers appropriate to invite to participate in the inquiry.

complaint investigation: an examination by OIPC staff of an organization's compliance with PIPA, the reasonableness of fees set by an organization under PIPA, or an unjustified refusal by an organization to act on an individual's request for correction of personal information under the control of an organization. A complaint investigation involves an examination of the organization's actions and any relevant records, and mediation to assist the applicant and the organization to settle the matter

evidence: the means used to present facts to prove or disprove an allegation. This may include documents, physical evidence, and oral or written testimony. Evidence received in an inquiry by affidavit is sworn evidence. Evidence received in an inquiry without an affidavit is unsworn evidence.

inquiry: an adjudicative process in which the adjudicator receives submissions from applicants, organizations and, if applicable, other participants, in order to consider and determine all questions of fact and law with respect to the issues in dispute.

in camera: evidence, argument or records presented to the adjudicator in private. *i.e.*, on a confidential basis, and which is not made available to other participants in the inquiry or to the public.

intervenor: a person, group of persons or an organization that has a broader interest in an issue being decided at an inquiry and is invited by the adjudicator to make representations. The adjudicator has the authority to decide who will be granted intervenor status in an inquiry and may consider requests or recommendations from the applicant, organization or a third party.

participant: A person or group of persons with a direct or indirect interest in the review and representing one position during an inquiry. The participants in an inquiry are usually the applicant, the organization and, where applicable, any third parties or other appropriate persons, or intervenors.

portfolio officer: A member of the OIPC staff responsible for conducting reviews, investigating complaints and assisting the participants to settle matters in dispute.