



OIPC

Office of the Information
& Privacy Commissioner
Nova Scotia

Engaging in the OIPC Review Process

a presentation to the
Halifax Board of Police Commissioners

December 14, 2022

Outline

- A. Purpose of *Part XX of the Municipal Government Act (MGA)*
- B. How it starts: responding to an access to information request
- C. What happens when the applicant disputes the response: Parties enter the OIPC Review Process
 - 1. Stage 1: Intake
 - 2. **Stage 2: Investigation**
 - Making the case to withhold information (representations)
 - 3. Stage 3: Public review report
 - 4. Stage 4: Post review report
- D. Training your staff



Purpose of Part XX of the *Municipal Government Act (MGA)*

Ensure that municipal bodies are fully accountable to the public by:

- giving the public a right of access to records
- specifying limited exceptions to the rights of access
- providing for an independent review of decisions
- providing for the disclosure of all municipal information with necessary exemptions, that are limited and specific



O'Connor v. Nova Scotia

2001 NSCA 132

“Nova Scotia’s lawmakers clearly intended to provide for the disclosure of all government information (subject to certain limited and specific exemptions) in order to facilitate informed public participation in policy formulation; ensure fairness in government decision-making; and permit the airing and reconciliation of divergent views. No other province or territory has gone so far in expressing such objectives.”



The process starts with responding to an access to information request

- A public body must respond without delay, openly, accurately and completely [s.467(1)]
- A public body must give reasons for refusing access and the section of the Act on which the refusal is based [s.467(2)]
- Where information is legitimately exempted from disclosure but it can be severed from the record, a public body must give access to the remainder of the record [s.465(2)]



The OIPC Review Process - overview

- Independent review of the public body's decision
- 4 Stages: Intake, Investigation, Public review report, Post-review report
- Municipal bodies should expect to be able to defend their decision based on what is in the legislation and with evidence
- Informal resolution is possible at any stage and is highly encouraged



Stage 1: Intake

- Municipal body will be notified of a request for review “forthwith” [s. 489(1)]
- Municipal body **MUST** provide OIPC with all related documents and correspondence and has the power to compel production [s. 491]
- Records must be provided in 2 copies: (1) unredacted (clean copy) and (2) redacted version with specific exemptions identified



Stage 2: Investigation

Informal Resolution

- Investigator will review the records and decision and work with the parties to try to informally resolve the issues

Representations

- If can't informally resolve, municipal body must prove it is allowed to withhold the information by submitting representations (arguments)



Making the case to withhold information

- A municipal body must prove the exemption applies and that it appropriately exercised discretion to not disclose through their representations. **The bar is high!**
- Statutory burden of proof:
“At a review or appeal into a decision to refuse an applicant access to all or part of a record, the burden is on the responsible officer to prove that the applicant has no right of access to the record or part.” [s. 498(1)]



Stage 3: Public Review Report

- Only get to this stage if not informally resolved earlier
- The Commissioner's job is to apply the law to the facts and records at hand and make recommendations to correct non-compliance with the law
- Recommendation making model, but an applicant can appeal the public body's decision in response to the Supreme Court of NS
- If the municipal body has not met its legal burden of proof, the Commissioner must recommend disclosing the information



Stage 4: Post review report

- Municipal body has **30 days** to make a decision to follow the Commissioner's recommendations
 - If it does not respond in 30 days it is deemed to have refused to follow the recommendations
- Either party can appeal to court
 - Hearing *de novo*



Training your staff

- All this information is set out in the OIPC's *Guide to Review Process* where information has been withheld in part or in full under an exemption
- <https://oipc.novascotia.ca/policies-and-procedures>



Questions / Comments



Office of the Information and Privacy Commissioner for Nova Scotia

Website: <https://oipc.novascotia.ca>

Email: oipcns@novascotia.ca

Telephone: 902-424-4684

