

For public consultation

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

The IPC invites your feedback on changes made to the **Code of Procedure** for Appeals Under the **Freedom of Information and Protection of Privacy Act (FIPPA)** and the **Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**.

Interested parties may submit their feedback to code.consultation@ipc.on.ca until **December 21, 2023**.

The IPC will take the feedback it receives into consideration before publishing a final version of the code. You'll receive a notice indicating the date the final revised code of procedure takes effect.

HIGHLIGHTS OF CHANGES TO THE CODE OF PROCEDURE FOR APPEALS UNDER FIPPA AND MFIPPA

1. Section 3 provides for new and updated definitions to commonly used terms. This includes a change from the previously named "intake" stage to "early resolution."
2. Section 4 includes new information for submitting an appeal form and paying appeal fees through the IPC's **online service** and incorporates information about fees that is contained in **Practice Direction #10**. This section also clarifies that if an institution decides to grant a request in whole or in part, the notice of decision is not complete and given by the institution until such time as it includes copies of the records to be provided pursuant to the decision.
3. Section 5 refers to the registrar's intake function regarding the screening and streaming of appeals, to be clearer about the registrar's role in determining which stage of the process an appeal will begin. This section also clarifies the registrar's existing function of requesting copies of records from an institution, including a detailed index of records. The registrar's function has now been separated from the early resolution stage.
4. Section 6 details the powers of the IPC at the early resolution stage to informally resolve an appeal.
5. Section 7 outlines the procedures that may be used during mediation. Currently, the code provides that an appeal not fully settled at mediation will move to adjudication, the revised code allows mediation to move an appeal to adjudication or another part of the appeal process, as appropriate, to resolve any remaining issues. This reflects current practice.

This section also permits a mediator to schedule a mediation meeting on a fixed date, to be set, in consultation with the parties. Also, where a mediator advises an appellant that further mediation is not possible but the appellant refuses to have the appeal move to adjudication or another part of the appeal process, the file will be closed.

6. Section 8 sets out in detail the procedures of the IPC when considering an appeal at adjudication. Most of the included procedures are reflective of current practice, which has evolved over time compared to the existing code. Of note, this section clarifies that an adjudicator may decline to conduct an inquiry where an appellant has failed or refused to engage in meaningful efforts to mediate a dispute.

This section also sets out the reasons for which an adjudicator may decline to conduct an inquiry generally. The provisions for the possibility of an oral inquiry, while rarely used, have been moved to this section. Finally, this section clarifies that if a party does not submit representations by the specified deadline, the IPC may proceed with the inquiry in the absence of such representations, or

it may deem the appeal abandoned and close the file if any party other than the institution fails to submit representations.

7. Section 9 establishes a new general power for the IPC to stream specifically identified appeal types to a new expedited appeals process. Such expedited appeals may follow different or abbreviated processes or procedures to assist with the timely processing of such appeals. Additional policies or procedures to handle expedited appeals will be posted on the IPC's website as they are developed and implemented. The existing separate sections involving "straightforward appeals," "reasonable search appeals," and "fee appeals" have been removed.
8. Section 10 provides for other general powers of the IPC, including the power to compel the production of records in the custody or control of the institution, and to enter and inspect an institution's premises in accordance with the existing powers under FIPPA and MFIPPA. This section also permits the IPC to receive affidavit evidence, which follows existing practice.
9. Section 11 more fully sets out the IPC's power to request records and an index of records from institutions to assist with the processing of an appeal. Also included is a reference to offence provisions from FIPPA and MFIPPA should any person: alter, conceal, or destroy a record with the intention of denying an access right; willfully obstruct the commissioner; willfully make a false statement to mislead the commissioner; or willfully fail to comply with an order of the commissioner.
10. Section 12 allows the IPC to limit an institution's ability to make a new discretionary exemption claim more than 35 days after receipt of the notice of appeal, similar to the current code. Whereas the existing code states that an adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period, the revised code establishes that the IPC **will not** consider any further discretionary exemption claims after this 35-day period, other than where an institution has mistakenly referred to or applied the wrong section of FIPPA or MFIPPA.
11. Section 13 contains updated language regarding the submission of a constitutional question, incorporating the provisions of the current [Practice Direction #9](#).
12. Section 14 expands on the IPC's power to grant stays, clarifying that stays may be granted for a specified time period or until the occurrence of a specific event.
13. Section 15 establishes a new process for the reconsideration of IPC decisions and orders. Whereas currently the individual who made the decision in question will respond to the request, this section sets out the process for an initial screening of a reconsideration request. This gatekeeping function will better allow for the appropriate use of staff's time to address reconsideration requests that meet the established criteria. If the party requesting reconsideration has not made an arguable case that any of the grounds for reconsideration are established, then the reconsideration request will be denied without further deliberation, and the appeal closed by a letter to the requester.
14. Section 16 expands on the current code's provisions to place an appeal on hold or deem it abandoned. This includes specific time frames for action by an appellant or third party appellant, and a requirement that such parties respond to the IPC otherwise their appeal may be deemed abandoned and closed without further notice.
15. Section 17 builds upon the existing power of the IPC to vary its own processes, or re-stream an appeal to a different stage of the process at any time, in order to secure the most fair, just, and expeditious resolution of the proceedings.

16. Section 18 sets out the provisions for computing time to complete general acts while an appeal is being processed, including a note that failure to comply within a certain time may result in a file being deemed abandoned or a determination being made without that party's submission.
17. Section 19 permits the IPC to make orders or give directions in an appeal to prevent an abuse of its processes, including the authority to deem an appellant to be a vexatious litigant and place restrictions on their ability to file appeals, or close their existing appeals.
18. While not part of the revised code being published at this time, the existing **practice directions** have been reviewed and updated to provide accurate information consistent with current IPC practices. In some cases, such as **Practice Direction #9, #10** and **#11** the content has been updated and included in the revised code itself (or in the case of the **appeal form**, is already available on the IPC's website). Updated practice directions will be published together with the final version of the revised code. The numbering of practice directions will not be altered, to allow for references to the practice directions in the IPC's order history to remain consistent and understandable.

CONTENTS

PART 1 – INTRODUCTION	1	11. PROVIDING RECORDS TO THE IPC	8
1. APPLICATION	1	12. NEW DISCRETIONARY EXEMPTION CLAIMS.....	9
2. PURPOSE AND INTERPRETATION	1	13. CONSTITUTIONAL QUESTIONS.....	9
3. DEFINITIONS	1	14. STAYS	10
PART II – THE APPEAL PROCESS	3	15. RECONSIDERATION	10
4. INITIATING AN APPEAL	3	16. “ON HOLD” AND ABANDONED APPEALS	11
5. INTAKE	4	17. VARYING THE PROCESS	12
6. EARLY RESOLUTION	4	18. COMPUTATION OF TIME	12
7. MEDIATION.....	5	19. ABUSE OF PROCESS / VEXATIOUS APPELLANT	13
8. ADJUDICATION	5		
PART III – EXPEDITED APPEALS.....	7		
9. EXPEDITED APPEALS - GENERAL.....	7		
PART IV – GENERAL.....	8		
10. GENERAL POWERS OF THE IPC.....	8		

PART 1 – INTRODUCTION

1. APPLICATION

- 1.01 This Code applies to appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

2. PURPOSE AND INTERPRETATION

- 2.01 This Code is to be broadly interpreted in the public interest in order to secure the most just, expeditious, and cost-effective 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 mediate or adjudicate the appeal and to ensure compliance with the provisions of any Order.
- 2.03 Omitting to follow any procedure in this Code does not for that reason alone render an appeal, or any step in an appeal, invalid.
- 2.04 The IPC may in its discretion waive or vary any of its own procedures in accordance with section 17.
- 2.05 The IPC may issue practice directions and rulings relating generally to appeals, at any time, including before or during any appeal.
- 2.06 The IPC shall interpret the procedures in this Code in a manner that ensures, to the extent reasonably possible, that persons with disabilities have full access to the appeal process.

3. DEFINITIONS

- 3.01 In this Code, the following definitions apply:

Act 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 or organization whose interests may be affected by an appeal.

Appeal means a request that the IPC 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.

Commissioner means the Information and Privacy Commissioner 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 streams an appeal to another stage of the process.

Expedited Appeal may include a Deemed Refusal, Failure to Disclose Records, Time Extension, Transfer, Adequacy of Decision Reasonable Search, Fee, or other type of appeal the IPC determines should be processed using expedited procedures.

Failure to Disclose Records 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 or sole remaining issue is whether the Institution's fee or fee estimate decision should be upheld.

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

Inquiry means a process in which the IPC inquires into 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.

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 appeals.

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

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 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, Third-Party Appellant, and any Affected Person notified by the IPC.

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

Registrar means a person employed by the IPC who receives, screens, and streams appeals.

Report of Mediator means a document prepared by a Mediator outlining background information and any issues in the appeal which remain outstanding.

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

Request means the letter or form, along 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 Appellant who seeks to appeal the decision of the Institution regarding the Request as an Affected Person.

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 an access decision of the Institution concerning the Request.
- 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 appeal form (see <https://www.ipc.on.ca/access-individuals/filing-an-appeal/>) 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. If an Institution decides to grant the Request in whole or in part, the notice of decision is not complete and given by the Institution until such time as it includes copies of the records to be provided pursuant to the decision.
- 4.06 A notice of appeal filed beyond the time permitted for making an appeal will not be accepted. However, if such time limit presents a “barrier” to the person, as defined in the Accessibility for Ontarians with Disabilities Act, 2005, the time limit may be extended for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of making the appeal.
- 4.07 The notice of 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.

- 4.07 The failure of the Appellant to comply with the requirements of the notice of appeal in section 4.07 may result in the IPC refusing to accept an appeal.
- 4.08 In accordance with the Act, an Appellant shall pay the applicable appeal fee as set by regulation at the time the appeal is made. The IPC will not grant a waiver of the applicable appeal fee.
- (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) An Appellant who did not make a Request, but is appealing an Institution's decision to disclose information relating to the Appellant, is not required to pay an appeal fee.
- 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 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 screens 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 process an appeal will begin and will stream the appeal accordingly.
- 5.03 In an appeal where an Institution has denied access to records, the Registrar will determine if copies of records are required to process the appeal, and in accordance with the procedure in section 11, may send to the Institution a written request for the records and a detailed index of the records, including the date by which the records and index are to be received.

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 is found to be outside of the IPC's jurisdiction, it will be screened out and a letter confirming the same will be sent.
- 6.02 Where an appeal is not screened out, a Notice of Appeal will be sent to the Appellant and the Institution, and may be sent to any other institution or person with an interest in the appeal.
- 6.03 The IPC will contact the Parties to determine if an informal resolution is possible.
- 6.04 If an informal resolution is not possible, the IPC will decide if the appeal should be dismissed or moved to another stage of the process.
- 6.05 Before deciding whether to dismiss an appeal, the IPC may invite submissions from the Appellant and/or the Institution.

- 6.06 The IPC will give the Appellant and the Institution written notice of any decision to dismiss an appeal at Early Resolution.
- 6.07 Where an appeal is not dismissed or resolved at Early Resolution, the appeal will move to Mediation or Adjudication.

7. MEDIATION

- 7.01 At Mediation, the IPC may contact the Parties, 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 The Mediation may be conducted on a fixed date to be determined by the Mediator, to be set in consultation with the Parties.
- 7.03 For appeals that are not fully resolved, a Report of Mediator may 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 does not amend the report in response to a request of a Party, the Mediator will advise the relevant Party. Where the Mediator does amend the report, the Mediator will send a copy of the amended report to the Parties.
- 7.06 The Mediator may also amend the report on the Mediator's own initiative, in which case, 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 by the stipulated time, and if the Mediator does not revise the report on the Mediator's own initiative, the report is final.
- 7.08 Where an appeal is fully settled in Mediation, the IPC will close the appeal file.
- 7.09 Where an appeal is not fully settled in Mediation, the IPC will move the remaining issues and the Report of Mediator to Adjudication or another part of the appeal process, as appropriate.
- 7.10 Where the IPC advises an Appellant that further Mediation is not possible to fully settle the matter, and where the Appellant advises that they do not want the appeal to move to Adjudication or another part of the appeal process, the file 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, with a view to determining whether the circumstances warrant conducting an Inquiry. Before deciding whether to

dismiss an appeal without conducting an Inquiry, the Adjudicator may invite submissions from the Appellant and/or the Institution and any other Party.

- 8.03 Where the information in the Report of Mediator leads the Adjudicator to conclude that an Appellant has failed or refused to engage in meaningful efforts to mediate the dispute, and the Adjudicator is of the opinion that such efforts would have substantially narrowed the issues or the number of records, the Adjudicator may decline to conduct an Inquiry in the areas identified.
- 8.04 Without limiting the Adjudicator's authority, the Adjudicator may also decline to conduct an Inquiry where, for example:
- (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) mandatory exemptions are claimed for the record that have previously been upheld for this type of record in a comparable fact situation in many 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; or
 - (h) where the issue is better dealt with in another forum.
- 8.05 The Adjudicator will give the Appellant and the Institution written notice with reasons of a decision to dismiss an appeal without conducting an Inquiry.
- 8.06 At the discretion of the Adjudicator, the Adjudicator may decide to conduct an oral Inquiry.
- 8.07 At an oral Inquiry, the Parties will be invited to make Representations to the Adjudicator either in person, telephone, or 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 If the Adjudicator decides to conduct a written Inquiry, the Adjudicator sends a Notice of Inquiry to the Party 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 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 involving an Affected Person, the Adjudicator may send a Notice of Inquiry to 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 aid in the disposition of an appeal.
- 8.15 At any point in an Adjudicator's 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. A Party seeking a time extension shall make this request in writing, in accordance with the procedure in section 17.
- 8.18 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 IPC 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; or
 - (b) the Inquiry may proceed and an Order may be issued in the absence of such Representations.
- 8.19 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.
- 8.20 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.
- 8.21 On making an Order disposing of some or all of the substantive issues in the appeal, the IPC will publish the Order.
- 8.22 Institutions and Third-Party Appellant organizations are generally named in an Order, whereas individual appellants and affected individuals are generally not named.

PART III – EXPEDITED APPEALS

9. EXPEDITED APPEALS - GENERAL

- 9.01 For Expedited Appeals, and where appropriate, the IPC may waive or vary its processes and procedures, or create specific processes and procedures, at its sole discretion in order to expedite resolution of the issue(s) at appeal in a most expeditious way.
- 9.02 For Expedited Appeals, the IPC may abbreviate its usual processes and procedures, including (without limitation) by:
- (a) shortening timelines for submissions and responses by the Parties;
 - (b) strictly adhering to established deadlines;

- (c) conducting fixed-day Mediation;
- (d) conducting an oral inquiry;
- (e) relying on written affidavit evidence of the Parties; or
- (f) issuing an order without hearing further from the Parties.

9.03 The IPC's discretion to waive or vary its processes and procedures in the context of Expedited Appeals 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 person who, in the IPC's opinion, may have information relating to the appeal.
- 10.03 The IPC may require to be produced to the IPC affidavit evidence by the head of an Institution or a specified delegate.

11. PROVIDING RECORDS TO THE IPC

- 11.01 With limited exceptions, the IPC requires copies of the records at issue in order to process an appeal. The IPC will send the Institution a written request for copies of the records and a detailed index indicating the date of creation of each record, a brief description of the record, the extent to which it was disclosed, and what exemption has been claimed. This request will also indicate the date by which, and the format in which, these must 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 Where the IPC determines that it is necessary, 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 a revised detailed index corresponding to the IPC's directions for organizing the records.
- 11.04 An Institution shall not in any way obstruct or frustrate the IPC's ability to obtain accurate records, including truthful, complete and accurate affidavits.
- 11.05 It is an offence under the Act for any person to:
 - (a) alter, conceal or destroy a record, or cause any other person to do so, with the intention of denying a right to access a record or the information contained in a record;
 - (b) wilfully obstruct the Commissioner in the performance of his or her functions;

- (c) wilfully make a false statement to, mislead or attempt to mislead the Commissioner in the performance of his or her functions; or
- (d) wilfully fail to comply with an order of the Commissioner.

12. NEW DISCRETIONARY EXEMPTION CLAIMS

- 12.01 In an appeal from an access decision, excluding a Deemed Refusal 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 new written decision sent to the Parties and the IPC. The IPC will not consider any further discretionary exemption claims after this 35-day period, other than where the Institution has mistakenly referred to or applied the wrong section of the Act.
- 12.02 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,
 - (a) question the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a rule of common law, or
 - (b) claim 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,(separately and collectively 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 as available 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 An Appellant may raise a constitutional question in an appeal only within 35 days after giving the IPC notice of the appeal. Any other Party may raise a constitutional question only within 35 days after the Party is notified of the appeal.
- 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 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 objects to providing a notice of a constitutional question, the IPC will not address the question.
- 13.09 The IPC may share representations on constitutional questions with all parties in accordance with the IPC's Code of Procedure and Practice Direction Number 7.

14. STAYS

- 14.01 An Adjudicator may stay any provision of an Order, at any time, on the request of a Party or on their 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.
- 4.04 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision. The IPC will not reconsider a decision simply on the basis that a Party disagrees or is dissatisfied with the result.
- 15.05 The IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative.
- 15.06 A reconsideration request shall be made in writing to the IPC. The request must be received by the IPC:
 - (a) within 21 days after the date of the decision; or
 - (b) where the decision specifies that an action or actions must be taken within a particular time period or periods earlier than 21 days, before the first specified date or time period has passed.
- 15.05 A reconsideration request should include all relevant information in support of the request, including:

- (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 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. A decision must be complied with within the specified time period unless the IPC or a court directs otherwise.
- 15.07 A reconsideration request does not preclude a person from seeking other legal remedies that may be available.
- 15.08 All requests for reconsideration are subject to an initial screening. If the Party requesting reconsideration has not made an arguable case that any of the grounds for reconsideration are established, then the reconsideration request will be denied without further deliberation.
- 15.09 If the request for reconsideration passes initial screening, the reconsideration request will be assigned to the individual who made the decision in question, unless for any reason they are unable to deal with the request, in which case the IPC will assign another individual to respond to the request.
- 15.10 The assignment of a reconsideration does not indicate that the grounds for reconsideration have been established. The determination of the merits of the reconsideration request will be made by the individual assigned to consider the request.
- 15.11 Before deciding whether to grant a reconsideration request on its merits, the IPC may notify and invite Representations from the Parties.
- 15.12 Where the IPC decides to grant or deny a reconsideration request, the IPC will make a written decision in the form of a letter or Order and send a copy to the Parties.

16. "ON HOLD" AND ABANDONED APPEALS

- 16.01 Where a non-Institution Party fails to provide current contact information to the IPC, and the IPC is unable to contact them, the IPC may place the appeal "on hold".
- 16.02 The appeal will remain "on hold" until the Party contacts the IPC or four weeks have passed without any further contact, whichever occurs first.
- 16.03 If the four weeks have passed without any further contact from the Party, the IPC may deem the appeal to be abandoned and proceed to close the appeal without further notice to the Party. The IPC will notify the other Parties in writing that the appeal is closed.
- 16.04 Where a non-Institution Party has provided current contact information but does not respond to the IPC by the deadline specified in correspondence sent to the Party, 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 Party. The IPC will notify the other Parties in writing that the appeal is closed.

- 16.05 The IPC may, in its discretion or on written request of a Party, and on notice to the Parties, place an appeal “on hold” for a limited period of time due to: the documented illness of a Party rendering them incapable of participating in the appeal process; a court proceeding related to the appeal; or the existence of multiple active appeals from the same or related Appellant(s).

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 in order 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 Adjudicator or, where no Adjudicator has been assigned, to the Registrar.
- 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 Parties within a specified time period.
- 17.05 Failure to provide a response within that time period will be deemed to constitute an absence of objection by the 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 course of an appeal, the IPC may move it to another stage in the appeal process that the IPC determines will be most effective to secure the fair, just and expeditious resolution of the proceedings.

18. COMPUTATION OF TIME

- 18.01 Where the IPC or this Code sets a timeframe:
- (a) the days are calculated as calendar days, and the last day for doing the act is deemed to end at 5:00 p.m. local Toronto, Ontario time;
 - (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 the time for doing an act expires on a day when the IPC's offices are closed, the act may be done on the next day that the IPC's offices are open.

18.02 A Party shall comply with any deadline communicated by the IPC at any stage of an appeal. Failure to comply may result in a file being deemed abandoned or with a determination being made without that Party's submission.

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. Where an Appellant is found to be a vexatious litigant, the IPC may, at any stage of the IPC's processes, close an appeal made by that Appellant as an abuse of process, and/or require that Appellant to obtain permission from the IPC to make further appeals or take further steps in appeals, subject to any conditions imposed by the IPC.

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

2 Bloor Street East, Suite 1400
Toronto, Ontario
Canada M4W 1A8

www.ipc.on.ca
416-326-3333
info@ipc.on.ca

September 2023