



HELPFUL TIPS

Helpful Tips is a reference document developed by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to help applicants/complainants and FOIP/HIPA Coordinators prepare for a formal review or breach of privacy investigation under *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and/or *The Health Information Protection Act* (HIPA).

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SECTION 7 PROCEDURAL DEFECTS

Our office has experienced a large volume of review files in which there are basic problems with compliance apart from any particular exemption. These procedural issues have historically been treated no differently than substantive issues related to the application of mandatory or discretionary exemptions. It is not uncommon that these files do not progress for a number of months because of delays in defining something as fundamental as which exemption the public body is relying on in denying access. There are then further delays of many months after the procedural defect has been cured but before the merits of the exemption have been resolved.

We have determined that these lengthy delays can be seen as rewarding public bodies that continue to deny access without having to meet the requirements in section 7 of FOIP and LA FOIP. Applicants, on the other hand, can be seen as being penalized by excessive delays in addressing the merits of the exemption(s) claimed. All of this brings the legislation into disrepute and undermines public confidence in FOIP and LA FOIP.

Specific Procedural Defects

Commencing September 1, 2007, our office will be implementing a new process to deal with requests for review that involve a failure of the government institution or local authority to meet the statutory requirements as interpreted by the Commissioner including:

- No identification of the specific statutory authority for a decision¹
- No explanation of the reason for a decision²
- No explanation of the reason for extension³
- Severance that fails to meet the requirements of section 8⁴
- Deficient fee estimate⁵
- Failure to respond to fee waiver request⁶

Expedited Review Process

The new process will include the following steps:

1. In any of these situations, the public body's FOIP Officer or FOIP Coordinator will be promptly notified by an OIPC Portfolio Officer of the procedural defect in its response to the access request and that the Request for Review will be designated for expedited treatment.

¹ OIPC Report F-2006-003 [22], [26], [27]

² OIPC Report F-2006-003 [22], [26], [27]

³ OIPC Report F-2006-003 [40]; OIPC Report F-2006-005 [33]

⁴ OIPC Report F-2006-003 [15], [19], [21], [24], [25], [28]

⁵ OIPC Report F-2005-005 [38], [71], [72], [73], [74], [75], [76]; F-2007-001 [57], [58]

⁶ OIPC Report F-2007-001 [19] to [26]

Expedited Review Process (cont'd)

2. If the defect is not remedied within 7 business days from the date that notice is provided to the FOIP Coordinator, the Portfolio Officer will immediately refer the file to the Commissioner.
3. In that case, the Commissioner will promptly notify the Deputy Minister or CEO of the government institution or head of the local authority of the procedural defect in the response to the access request.

In addition to this new process, our office may comment in our Annual Report specifically on problems identified with particular government institutions and local authorities in meeting procedural statutory requirements of FOIP and LA FOIP.

GENERAL CONSIDERATIONS

Identity of Applicant is Protected Personal Information

Some government institutions have asked whether there are any rules around the identity of someone who has made an access request. You will have noticed that in our formal Reports we refer to the applicant and do not identify that person. At the initial stage of a request for access a couple of considerations apply. Our view is that a government institution should not disclose the identity of the applicant to anyone who does not have a legitimate 'need to know'. Need to know relates to the processing of the access request.

Our view is that it is improper to treat applicants differently depending on who they are or what organization they may represent. It would also be improper to broadcast the identity of an applicant throughout a government institution or to disclose the identity outside of that particular department. To avoid differential treatment we encourage the FOIP/HIPA Coordinator to mask the applicant's identity. This approach is consistent with direction from the Federal Court of Canada and the practices in other provinces. There is a useful discussion of this issue in the Annual Report of the Information Commission of Canada 2001-2002 at pages 22 to 24.

Why does an Applicant want access; Does it matter?

FOIP, LA FOIP and HIPA create a right to access information. Our office takes the position, consistent with the practice in other Canadian jurisdictions, that you are not therefore entitled to require an applicant to explain why certain records/information are sought. Although the applicant does not need to give a reason for seeking a record, this does not prevent a FOIP/HIPA Coordinator from inviting the applicant to share his/her reason for the purpose of ensuring that the public body knows exactly what records would be responsive to the request and to minimize cost to the applicant.

Duty to Assist the Applicant

FOIP does not stipulate a duty to assist applicants. The OIPC however takes the position that there is an implied duty on the part of government institutions (and local authorities under the LA FOIP Act) to take reasonable steps to ensure that they respond to access requests openly, accurately and completely.⁷ The duty to assist is explicit in HIPA.⁸

While applicants have a responsibility to “*specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject matter to identify the record,*” many applicants do not have detailed knowledge about the types of records your organization maintains. In our view this kind of implied duty to assist is essential to meet the purpose of the FOIP and LA FOIP Acts. This is the standard that is clearly stated in HIPA.

It is useful for a FOIP/HIPA Coordinator to contact an applicant directly to determine (a) if what the applicant is looking for is clear; (b) if the request can be accommodated informally outside of the FOIP, LA FOIP or HIPA; and (c) if the request can be clarified in the interests of focusing on certain key records and avoiding unnecessary costs to the applicant.

Adequate Search For Records

The public body has a duty to search for, identify and consider all responsive records. To ensure a complete and adequate search, the public body should consider the following:

- Were records in any form or format considered (i.e. electronic, paper, other)?
- Is the original access request very broad and could include information developed over a wide open time period? If so, how did you define the search?
- How did you search for records in the public body’s possession?
 - Did you search yourself?
 - Did you delegate others to do the search? If so, how can you be sure that the search was comprehensive?
 - Did you send out an email to other units, etc?
- Could records also exist that are responsive to this access request that are not in your possession, but in your control?
 - Did agents, consultants or other contracted services have any role in the project the access request is referencing?
 - If yes, are these records included in the package provided to the OIPC?

⁷ OIPC Reports F-2005-005; F-2004-007; F-2004-005; F-2004-003; and LA-2004-001

⁸ OIPC Report H-2006-001

Adequate Search For Records (cont'd)

FOIP and LA FOIP are clear that access rights under these laws is to “*records that are in the possession or under the control*” of that body (government institutions and local authorities). In other words, the access provisions in both Acts are “record-driven” and not “information-driven.” There is no responsibility under either Act to create records that do not otherwise exist. Yet, sometimes instead of providing the applicant with responsive records, public bodies are offering summaries of the information requested instead, thus creating new records. This may be in fact what the applicant is looking for. A formal access request under either the FOIP or LA FOIP entitles the applicant to documents in their original form. If this is all the applicant seeks, then an informal request by phone may suffice. Only requests for access in the prescribed form may be appealed to the Commissioner in the form of a request for review. Under HIPA, an applicant may make an oral request for access. However, only when the applicant has submitted a written request for access in accordance with section 34 may the OIPC eventually undertake a review if the applicant is dissatisfied with the result.

FEES AND FEE ESTIMATES

Applicable Fees

Each head of a public body must determine whether in any given case it will assert a claim for the fees prescribed by the Act and Regulations.

Fees should be reasonable, fair and at a level that does not discourage any applicant from exercising his/her access rights. At the same time, the fee regime should promote and encourage applicants to be reasonable and to cooperate with public bodies in defining and clarifying their access requests.

Under the three different Acts in Saskatchewan, there may be 4 different kinds of fees:

1. application fees;
2. fees for searching for a responsive record;
3. fees for preparing the record for disclosure; and
4. fees for the reproduction of records.

Note: HIPA does not include a specific fee schedule. Rather, section 39 provides that “a trustee may charge a reasonable fee not exceeding the prescribed amount to recover costs incurred in providing access to a record containing personal health information.” In 2004, a fee schedule was proposed by Saskatchewan Health though not yet implemented. For information on the Commissioner’s view with respect to the proposed schedule review the Commissioner’s *Report on The Health Information Protection Act Draft Regulations, September 2004* at the following:

<http://www.oipc.sk.ca/Reports/TheHIPADraftRegulations.pdf>.

Applicable Fees

Further, in Report H-2006-001, with respect to fees, the Commissioner offered the following:

[50] Given the jurisdiction of this office to provide advice and commentary to trustees, I offer the following observations:

□ The photocopy charge of \$0.50 seems to be excessive. This is double the charge for photocopying permitted under The Freedom of Information and Protection of Privacy Act (FOIP) or The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP). It is also double the proposed photocopy charge in the relevant Draft Regulation.

□ The \$50 fee to ‘open the file’ is problematic since it is not in any way related to the work required by a trustee to search for and obtain the record. It constitutes an “application fee”. I note that there is no application fee under the FOIP Act but that there is a \$20 application fee under the LA FOIP Act. In other words, a regional health authority when responding to an access request under LA FOIP is limited to the \$20 application fee plus additional search and preparation fee when appropriate. In the result, the \$50 fee to ‘open the file’ seems excessive.

Application Fee

There is no application fee for an access request under FOIP. There is a \$20 application fee for an access request under LA FOIP.

Searching for a Record

- Under FOIP, the fee for searching for records and preparing them for disclosure is calculated at the rate of \$15 for 30 minutes.
- Under FOIP, there is no fee for the first 2 hours of work in responding to an access request.
- Under LA FOIP, the fee for searching for records and preparing them for disclosure is calculated at the rate of \$15 for 30 minutes.
- Under LA FOIP, there is no fee for the first hour of work in responding to an access request.

This relates to the personnel time involved in finding a responsive record. Search time does not include time spent:

- reproducing the records;
- traveling to off site locations;
- reviewing the records;
- discussing the scope of the request with the applicant; or
- providing guidance on the search to employees of the public body.

Preparing the Record for Disclosure

Preparing the record for disclosure includes time spent physically severing exempt information from records. Time spent reviewing records for release and identifying records that require severing are activities that should be considered part of the government institution's general responsibilities under the Act. That time is not compensable as defined by the phrase, "preparing a record for disclosure" in section 6(2)(b) of the Regulations.

The major work that would constitute "preparation of the record" is the physical severing of portions of a record in accordance with mandatory or discretionary exemptions in the statute. The Regulations contemplate a charge for actually severing a record. It would not contemplate time for:

- Deciding whether or not to claim an exemption;
- Identifying records requiring severing;
- Identifying and preparing records requiring third party notice;
- Packaging records for shipment;
- Transporting records to the mailroom or arranging for courier service;
- Time spent by a computer compiling and printing information;
- Assembling information and proofing data;
- Photocopying; and
- Preparing an index of records.

Section 6(3) of the Saskatchewan Regulations appears to be unique to Saskatchewan. This provision reads:

Where a search and retrieval of electronic data is required to give access to a record requested by an applicant, a fee equal to the actual cost of the search and retrieval, including machinery and operator costs, is payable at the time when access is given.

This provision contemplates recourse to remote equipment that involves data stored in a fashion that restricts access to dedicated computer technicians.

Section 8(1) of the Regulations states:

8(1) No fees are payable where access to a record is refused.

Section 8 of FOIP contemplates a situation where a government institution refuses all access to a record. If the government institution is prepared to provide access to a record from which portions have been severed, the government institution is entitled to charge fees for search and preparation of the record in accordance with the balance of the fee regulations.

Fee Waiver

Fees can be waived if

1. payment of the fees would constitute a substantial hardship; **AND**
2. a waiver would be in the public interest or the information is personal information of the applicant.

Burden of Proof

Having regard to the purpose of the Acts and the practice in other Canadian jurisdictions, the head of the public body bears the burden of establishing the reasonableness of the fee (Report 2005-005 [29]).

Fee Estimates

1) Form

An appropriate written fee estimate notice to an applicant should include the following information:

1. Time required to search electronic records;
2. Time to prepare electronic records for disclosure;
3. Time required to search other records;
4. Time required to prepare other records for disclosure; and
5. Number of persons that will be involved in the search or preparation for disclosure activities that will be claimed as compensable and an explanation as to why more than one person is required to be involved in either search or record preparation activities.

2) Timing

It is implicit in the Act that the estimate should be provided to the applicant before the services are provided. Once the work has been done, the fees would be precisely calculated and there would be no point in estimating fees. It would also make little sense to put the government institution to the considerable work of preparing the record for disclosure if the applicant was unwilling to pay the appropriate costs that the government institution is permitted to charge before providing access to the applicant.

A fee estimate can facilitate discussion between the applicant and the public body to ensure a clear understanding of what is required under the request. The information in an estimate:

- allows the applicant an opportunity to modify the request and minimize the fees; and
- prevents the public body from doing more work than necessary, especially early on.

Sections 9(2), (3) and (4) of the FOIP and section 7(1) of the Regulations provide that when the estimated fees exceed \$50:

- the head of a government institution must provide “*a reasonable estimate of the amount*” of fees; and
- the 30 day period to respond to an access request is suspended “*until the applicant notifies the head that the applicant wishes to proceed with the application*”.

One half of the estimated amount must be paid before the processing of the application proceeds and the balance must be paid before the delivery of the records. If the fee estimate “*exceeds the actual amount of fees*” incurred in fulfilling the request, “*the actual amount of fees is the amount payable*.”

Fee Estimates (cont'd)

3) Interim Notice

The fee estimate should be accompanied by an interim notice⁹. An interim notice would provide:

- the applicant with an indication of whether access is likely to be granted in whole or in part; and
- what exemptions are likely to apply to the records.

This information would greatly assist the applicant to determine whether he/she wishes to proceed with the entire request. Such an interim notice would not be a decision that could be the subject of a request for review by this office.

For a full discussion for fees and fee estimates under FOIP, see Report F-2005-005.

PREPARING FOR A REVIEW

Introduction

Our office has found that many different approaches are taken by public bodies in preparing materials for a review by the Commissioner under Part VII of FOIP, Part VI of LA FOIP or Part VI of HIPA.

What follows is a best practice for organizing and presenting materials for that purpose. There are usually two different documents involved in a formal review by the OIPC:

1. **Record** or documents responsive to an access request; and
2. **Submission** or written argument as to what the OIPC should do and why.

Preliminary Objection to Review

In the event that the public body has reason to believe that either the Commissioner does not have jurisdiction to deal with a request for review or that the application for review is frivolous, vexatious, not made in good faith or concerns a trivial matter, the public body should raise a preliminary objection to the review and notify the Commissioner accordingly. The public body should provide particulars and any relevant evidence in support of the preliminary objection. Normally, the Commissioner will make a decision pursuant to section 52 of FOIP, 41 of LA FOIP, or 43 of HIPA with respect to that preliminary objection before proceeding further with the review. He will advise both the applicant and the public body of his decision.

⁹ Report F-2005-005; F-2007-001

Notification of Third Parties

The public body must make an early assessment whether there is a third party that needs to be notified of the review. Section 52 of FOIP or 41 of LA FOIP may require that the third party be given written notice by the public body of the review. “Third party” must be a person (including an incorporated entity) other than an applicant or a government institution or local authority. This notice is independent of any previous third party notices given during the access process prior to the review.

Preparing the “Record” (cont’d)

The government institution, local authority or trustee must provide the Commissioner with a copy of the entire package of withheld records responsive to the applicant’s access request. This includes records that the government institution, local authority or trustee believes are subject to solicitor-client privilege or some other mandatory or discretionary exemption. The records that have been provided to the OIPC will not be disclosed by the OIPC to the applicant.

If any information has been withheld from the applicant, the government institution, local authority or trustee may submit the record in one of two ways:

1. Reproduce the withheld portion of the record in red ink, leaving the disclosed portion in black ink, and clearly indicating, beside or near the withheld portion, the applicable section(s) of the relevant Act; or
2. Alternatively, provide a copy of the record with:
 - a. The withheld information outlined or highlighted, and
 - b. The relevant section number(s) of the Act clearly indicated beside or near that withheld information.

In preparing for the review, the government institution, local authority or trustee should prepare an Index of the Record(s) in table form. That index should include the following:

1. All the pages should be numbered in sequence. However, this may not always be practical. For example, with 2 binders of documents, each one may already have pages numbered in sequence. In that case, if the Record is identified, the pages need no further numbering; identification as “Record A, page 2” is sufficient. A loose collection of diverse records should be numbered in sequence.
2. For each page upon which information has been withheld, identification of the section numbers of the Act under which any information has been withheld would be important.
3. A description of the document in which information has been withheld or disclosed, and
4. The page number(s) on which information has been withheld or disclosed. The index should account for every single page of the record.

Preparing the “Record” (cont’d)

A sample index appears below:

Sample Index of Records			
Page Number(s)	Description	Section(s)	Comments/Explanations
1	Plan showing building and grounds of detention centre dated Nov. 11, 1998.	15(1)(h) & 15(1)(m)	Since this record shows entrances & exits to bldgs & grounds, & other security-sensitive info, its release could reasonably be expected to facilitate escapes & to jeopardize the security of the detention centre, so both exemptions apply. As the Minister’s policy is to prevent such security lapses, the head is exercising his discretion to apply the exemption & to withhold this record in its entirety.
6-18	Minister’s report to Cabinet	16(1)	This report presents advice, analysis & policy options for consideration and was prepared in confidence to facilitate cabinet discussion. The head is withholding this entire report based on this mandatory exemption.
Record B	Justice opinion to Finance Minister	22(b)	Legal Counsel prepared this document to provide the Minister with legal advice about ... The head is exercising his discretion to exempt this document because the information is sensitive and subject to solicitor client privilege.

Claiming an Exemption

It is important that government institutions and local authorities cite all the relevant mandatory or discretionary exemptions it intends to rely on at the time it responds to an applicant’s access request. The OIPC has encountered a number of cases where the public body decides to raise a number of new exemptions once our office undertakes a formal review of their decision to withhold a record. This is unfair to the applicant.

Our practice is that we will not normally consider a new discretionary exemption once we commence our review unless the public body can demonstrate that this will not cause undue delay and that it will not prejudice the applicant.

We will still consider mandatory exemptions at the review stage even if they were not raised by the public body in its response to the applicant.

Preparing the Written “Submission”

The government institution, local authority or trustee usually attempts to make the case by supplementing the *record* with a written *submission*.

A government institution, local authority or trustee has the burden of proof pursuant to section 61 of FOIP, section 51 of LA FOIP and/or section 47 of HIPA if it claims that access should or must be refused. The burden is not on the Applicant to establish that an exemption does not apply. This means that it is not enough to write the Commissioner and simply say “*access is denied because of section 19* [or some other mandatory or discretionary exemption]”. It is up to the government institution, local authority or trustee to ‘make the case’ that a particular exemption(s) applies. That means presenting reasons why the exemption is appropriate for the part of the record that has been withheld.

The purpose of the submission is to inform the Commissioner and other parties to the review about the main issues of the case and to present evidence. Evidence is information or material that establishes fact upon which the Commissioner will base his decision. The amount or type of evidence required in order for a party to meet its burden of proof will vary dependent on the particular facts, issues and circumstances. The Commissioner will decide what evidence to rely on and how much weight to give that evidence. To be successful, the party will be required to prove certain facts and issues according to a particular standard of proof. The standard of proof is “on a balance of probabilities” or “on a preponderance of evidence.” A party will have proven its case on a “balance of probabilities” if the Commissioner is able to say: “I think it more likely, or more probable, than not.” This means that the Commissioner has considered and weighed the evidence presented by both parties and the Commissioner is convinced by the persuasiveness and/or accuracy of one party’s evidence over the others.

A submission should contain the following:

1. Table of Contents;
2. Summary of arguments;
3. Supporting documents, authorities and other relevant information; and
4. Appendices (e.g. Affidavits) if necessary.

Information that would be useful to the Commissioner includes:

- (i) Excerpts from relevant legislation or regulations that apply to the operations of the public body and that relate to decisions exercised by the head.
- (ii) Excerpts from policy manuals that set out practices or policies followed by the government institution or local authority that relate to the decisions exercised by the head.
- (iii) Relevant court decisions or past Reports of the Saskatchewan Information and Privacy Commissioner. The Saskatchewan OIPC published on its website the reports and recommendations issued when it concludes a review of a decision of a government institution or local authority.
- (iv) Decisions made by Information and Privacy Commissioners in other jurisdictions that may be of assistance to the Commissioner in his consideration of the issues.

Preparing the Written “Submission” (cont’d)

Each exemption under these Acts has certain requirements that must be satisfied. It is important for public bodies claiming an exemption or exemptions to address each component of these requirements. For every exemption claimed consider the following:

- Have you clearly identified the record or parts at issue?
- Have you identified the exemptions that apply to each part of the record which has been withheld from disclosure?
- Have you reviewed previous OIPC Reports to determine how the exemption has been interpreted in the past?

Where an exemption is discretionary,

- Have you considered whether the government institution or local authority should rely on this exemption in the particular circumstances?
- If so, have you explained the basis for the head’s exercise of discretion to withhold the record?

Where an exemption requires proof that a particular consequence would result from disclosure of the record (i.e. risk to physical health or mental health or safety),

- Have you identified the consequences in detail?
- Have you provided detailed and convincing evidence establishing a reasonable expectation of harm contemplated by the particular exemption?

Where an exemption requires proof that a record was prepared for a particular purpose (i.e. cabinet confidence, solicitor client):

- Have you provided facts to support your claim?
- Have you identified the facts which apply to each component of the exemption?

Where proof is required that a record or ‘information’ was provided or received implicitly or explicitly in confidence:

- Have you provided details of the circumstances in which the record or information was provided or received?
- Have you provided evidence of the expectation of confidentiality and shown that this expectation was reasonable?

Where proof is required that a record is one of the types of records listed in the exemption or that it contains certain types of information (i.e. scientific, financial, and commercial):

- Have you identified the particular type of record?
- Have you provided reasons why the record fits into this category?

Preparing the Written “Submission” (cont’d)

Where the personal information or personal health information exemption is claimed:

- Have you identified which information in the record constitutes personal information or personal health information, why it should be considered such and to whom it relates?
- Have you considered whether the record contains the requestor’s personal information or personal health information? If this is so, did you consider the specific provisions of the applicable Act granting access to one’s own personal information (section 31 of FOIP; 30 of LA FOIP; and 38 of HIPA)?

Exchanging Submissions between the Parties

A government institution, local authority or trustee may ask to provide part or all of its written submission “in camera”, meaning that such material is provided to the Commissioner (and his staff) only and is not to be shared with the other parties. In such a case, the party making the request should provide reasons as to why part or all of a written submission should not be exchanged among the other parties. Please note that the submission is separate and distinct from the record. Only the submission may be shared with the Applicant. The record will not.

While the confidentiality provision in the Acts mandates that the Commissioner “*shall not disclose any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act,*” the Acts also provides the discretion to disclose “*in the course of a review ..., any matter that the commissioner considers necessary to disclose to facilitate the review.*” To facilitate the common law duty of fairness which requires that each party know the case to be met, an exchange of the submissions made by the parties to the review is reasonable and forms a rebuttable basis for a review by the OIPC.

The Commissioner decides whether to accept some or all of a written submission in camera. The Commissioner will accept in camera the records or information an institution or local authority has withheld. The Commissioner will also accept in camera the personal information or confidential business information of other parties. If the Commissioner refuses an in camera submission, he will return the submission to the party, so that the party can decide what can be exchanged among the other parties.

A submission or part of a submission that a party wishes to have accepted by the Commissioner in camera should be sent under separate cover to the Commissioner. In that case, the submission should clearly be labeled either:

“Submission for the Commissioner only (“in camera” submission, not to be exchanged among the parties)”,

OR

“Submission to be exchanged among the parties”.

We will request instruction from the public body if in receipt of an unlabeled submission to be certain of intent, or if necessary, return for proper labeling. The Commissioner will not assume responsibility for what a party puts in a submission that is labeled, **“Submission to be exchanged among the parties”**.

AFFIDAVIT EVIDENCE

In reviews by the OIPC, evidence is provided to satisfy factual or legal requirements or to provide background information. Affidavit evidence may be desirable because, unlike other statements made to the Commissioner's office, an affidavit is evidence given under oath.

General

1. An affidavit is a written statement made under oath. Affidavits are a common method of providing evidence. An affidavit must be sworn or affirmed before a person who is qualified as a Commissioner for administering oaths or affirmations in the Province of Saskatchewan.

Use of affidavit evidence

2. On some occasions, the OIPC may request an affidavit to assist in determining factual issues in a review. This may be done in cases where there is a question as to whether a reasonable and adequate search has been undertaken for responsive records. An affidavit may be requested when the facts asserted by the public body are contradictory or inconsistent with other evidence. The Commissioner has the same ability as the Courts to compel production of documents or verbal evidence under oath. [FOIP section 54; LA FOIP, section 43; HIPA section 46]

3. During a review, where a Portfolio Officer believes that an affidavit may help to resolve the issues, the Portfolio Officer may request a party to provide an affidavit to the OIPC. Where the OIPC requests an affidavit, the request will specify the relevant issues in the review and the types of information that should be included. The Portfolio Officer will seek consent from the party providing the affidavit to share a copy of that affidavit with the other party or parties involved in the review. If the party consents to sharing the affidavit, the OIPC will provide a copy to the other party or parties.

4. Even if the OIPC has not required the evidence in affidavit form, if a factual issue may be contentious, parties should consider providing their evidence concerning that issue to the OIPC in affidavit form.

5. An affidavit must contain information about the person swearing the affidavit, including the individual's name, residence and occupation. The affidavit must include an explanation of how he or she has knowledge of the evidence being presented in the affidavit (often satisfied by a description of the individual's qualifications and/or job responsibilities).

6. Affidavit evidence should be detailed enough to allow the OIPC and/or the other party or parties receiving it to fully understand its contents, and should, wherever possible, be confined to facts within the personal knowledge of the person swearing the affidavit. A sample format for an affidavit is attached.

**AFFIDAVIT OF WITNESS
CANADA**

**Province of Saskatchewan
TO WIT:**

I, (name of person swearing affidavit), of the (city, town, municipality) of (name of city, town or municipality), in the Province of Saskatchewan, (occupation)

Make oath and say:

1. That I am (description of individual including job title and employer where relevant). Because of (insert reasons), I have personal knowledge of the facts as set out in this affidavit.
2. (Set out relevant facts using single numbered paragraphs. Provide names and job titles where relevant.)
3. This affidavit is made for the purpose of reviewing (name of institution)'s decision with regard to (describe decision) and for no other purpose.

Sworn before me at the _____)
of _____)
in the Province of Saskatchewan)
this _____ day of _____)
A.D., 20 _____)

signature of the person named above

A Commissioner for Oaths, Notary
Public or Justice of the Peace.

STEPS TO THE INVESTIGATION PROCESS

Requests for Review of an access request and breach of privacy complaints are two distinct and separate processes of the Office of the Information and Privacy Commissioner. This section provides details of the OIPC process for investigating breach of privacy complaints.

Investigating Breach of Privacy Complaints

1. The complainant should first contact the Privacy Officer or FOIP Coordinator for the government institution, local authority or trustee (the public body) to attempt to resolve the complaint.
2. If no satisfactory resolution of the concern by dealing directly with the public body, the complainant may choose to file a written complaint with the OIPC.
 - Generally, the OIPC will not deal with a complaint that is two years old or older.
 - The complaint should be in writing and should provide the following:
 - Complainant's name, address and phone number
 - Date
 - Specific government institution, local authority or trustee against whom complaint is made
 - Copies of any correspondence with the public body relevant to the complaint
 - Description of the events giving rise to the complaint
 - Clarify whether the complainant wishes to be treated as anonymous when the OIPC communicates with the public body.

Once we review the complaint the following will occur:

3. Once it is determined that the OIPC has jurisdiction to investigate, a Portfolio Officer will be assigned to the file.
4. The Portfolio Officer will advise the public body of the complaint and that the OIPC will be investigating under the authority of FOIP, LA FOIP or HIPA. At the same time we will advise the complainant that an investigation is underway.
5. The Portfolio Officer will gather information from the public body to determine the relevant facts.
6. The Portfolio Officer will define the issues for purposes of the investigation and invite submissions from the public body and the complainant.
7. The Portfolio Officer will attempt to mediate, or otherwise informally resolve the complaint, with complainant and public body.
8. If no mediated settlement is possible, the Commissioner will proceed to issue a formal Investigation Report. The identity of the complainant will not be disclosed.
9. There may be a limited right of appeal to the Court of Queen's Bench by an aggrieved complainant if the complaint was handled under HIPA pursuant to section 46. There is, however, no right of appeal from a report dealing with a breach of privacy under FOIP or LA FOIP.

CONTACT INFORMATION

If you have any questions or concerns during any stage of the review process, please contact the OIPC at 1-877-748-2298 or 306-787-8350 or by writing to:

Office of the Saskatchewan Information and Privacy Commissioner
503 – 1801 Hamilton Street
Regina, SK S4P 4B4

Check out our website at www.oipc.sk.ca.