



Commissioner's Complaint Process

Upon a thorough analysis of the *Act*, including a strong adherence to its purposes and spirit, the Commissioner has adopted an approach to take all necessary steps to resolve a complaint, believing that it is preferable for all concerned to become more familiar with their rights and obligations under the *Act*, making way for improvements in how the public requests information and how government bodies respond to these requests. Although it is referred to as a resolution process, the Commissioner's Office still investigates the complaint by a thorough review of its issues and of all relevant records. The distinction lies in the approach: we invite the public body to consider a *recommended course of action* that encourages the public body to disclose the information that the *Act* stipulates the public body should have done in the first place. Where the public body agrees, the applicant receives the information he or she was entitled to under the *Act* and the public body fulfills its statutory obligations.

The complaint resolution process is neither a dispute resolution nor a mediated outcome.

It is designed to assist in determining exactly what information can be released based on the request and the applicable rules of the *Act*.

The applicant who files a complaint is not involved during the investigation, unless to provide any additional representations. Our process is confidential and remains so until such time as the Commissioner is able to share her findings at the conclusion of the case.

Step 1 – Notice, Review of case, and Examination of relevant records

Upon receipt of a complaint, letters are sent to both the applicant and the public body indicating that the

Commissioner has assigned the case to an Investigator and that we will take all steps necessary to resolve the complaint, if possible. The Investigator identifies the issues and communicates them to the public body and meets with the public body's officials to review all relevant records relating to the request.

Step 2 – Written Preliminary Findings

Where we are satisfied that the public body conducted an adequate search, has identified and provided to us all relevant records, we determine whether the initial response given by the public body was in conformity with the *Act*. For instance, if the response identified information A, B, and C, and information A and B was released but not C, we will assess whether the public body should have granted access to information C. In some cases, we also identify additional information not initially retrieved and determine whether that information should be released to the applicant.

We communicate our findings in writing, referred to as preliminary findings, which provide the public body with useful comments on the aspects of its processing of the request that were good and where improvements are required. More importantly, we provide the public body with a recommended course of action that will, if accepted, resolve the complaint.

The **recommended course of action** will require the public body to:

- a) prepare, with our assistance, a *revised response* that discloses information to the applicant that the applicant was entitled to receive under the *Act* and should have received at the outset; and/or,
- b) furnish clear explanations to the applicant so that he or she is able to fully ascertain what information existed, did not exist, could be released and reasons why some information could not be disclosed.

The Commissioner's Office lends assistance to ensure that the revised response meets all of the requirements of the *Act* regarding the disclosure of the requested information. The public body submits the revised response directly to the applicant.

If the public body is not interested in providing a revised response, we proceed directly to **Step 6**.

Where a revised response is not required, the Commissioner informs both parties that the initial response to the request for information was in conformity with the *Act* with such comments and explanations to explain these findings. The case is concluded as no further investigation is necessary.

Step 3 – Revised Response and Input from the Applicant

By separate letter, the Commissioner informs the applicant that our work has been carried out and that based on our investigation to date, the revised response is in conformity with the law. We ask the applicant to review the revised response and provide us with comments (in writing) whether or not it is satisfactory (if not, reasons why). The applicant is usually accorded a couple of weeks to provide this input depending on the complexity of the matter. The Commissioner then reviews the applicant's comments to assess whether some issue or other information may have been overlooked.

Step 4 – Revised Response Satisfactory

Where the applicant is satisfied with the revised response, the Commissioner concludes her investigation as one that was successfully resolved to the satisfaction of both parties and in conformity with the *Act*. This conclusion is confirmed by letter to both the public body and the applicant.

There is no requirement for the Commissioner to file a formal report under section 73 for the reason that there is no recommendation to be made to the public body on its response (revised or initial).

A Report of Findings that does not carry a recommendation does not grant an automatic statutory right of appeal; an applicant's only recourse is to apply for judicial review before the Court of Queen's Bench.

Step 5 – Revised Response Not Satisfactory

In the case where the applicant is not satisfied with the revised response, we again review the case in its entirety and continue our investigation where we believe some information may have been missed.

Where we are quite certain nothing was missed and can confirm that the revised response was indeed proper:

- a) we cease our investigation based on our belief no further investigation is necessary and we send a reporting letter to both the applicant and the public body with our findings; or,
- b) we end the resolution process, investigate and analyze the matter further, and draft and publish a formal **Report of Findings** under section 73, which contains:
 - all of the facts of the case,
 - a legal analysis of the applicable rules of the *Act*,
 - the fact that the public body issued a revised response,
 - reasons why the resolution process was not successful, and
 - that there is no need of recommendations because the applicant received all of the information to which he or she was entitled under the *Act*.

Where we find that the public body had not in fact provided to us with all of the relevant information, resulting in an improper revised response, the Commissioner continues her investigation until this is accomplished, if possible. If some aspects were inadvertently overlooked and the public body wants to correct the situation, a second revised response can issue by following the **Steps** found in **2, 3** and **4** above.

If the public body is not amenable, however, the Commissioner ends the resolution process and proceeds to draft and publish a formal **Report of Findings** under section 73, which contains:

- all of the facts of the case,
- a legal analysis of the applicable rules of the *Act*,
- reasons why the resolution process was not successful, and
- recommendations to the public body for the disclosure of all relevant information to the applicant. The public body makes a decision about the recommendations under section 74.

Step 6 – Public body not amenable to resolving the complaint

In the case where the public body decides not to adopt the recommended course of action during the resolution process, we review the case in its entirety to ensure that our investigation was thorough and accurate.

The Commissioner ends the resolution process and proceeds to draft and publish a formal **Report of Findings** under section 73, which contains:

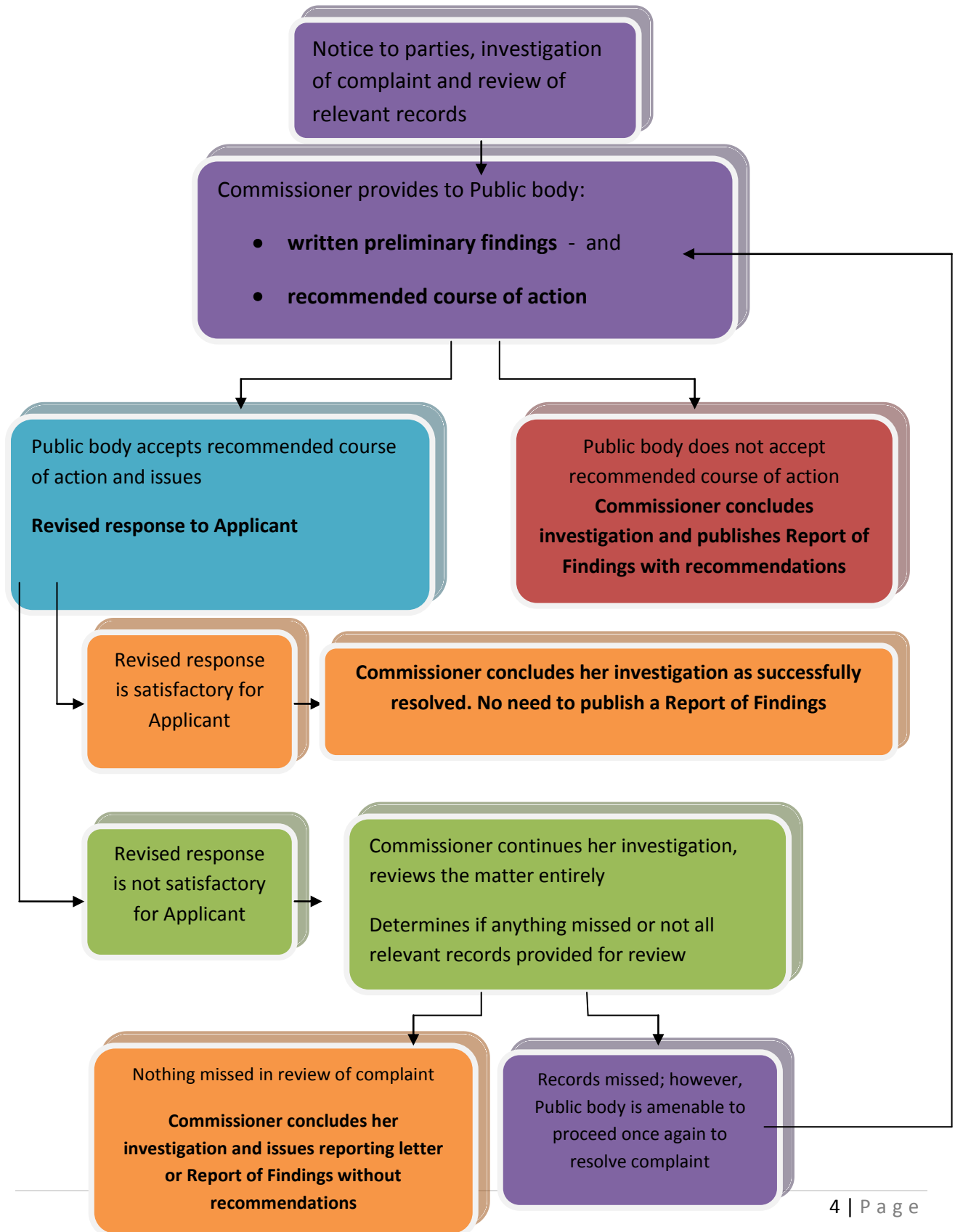
- all of the facts of the case,
- reasons why the resolution process was not successful,
- a legal analysis of the applicable rules of the *Act*,
- recommendations to the public body for the disclosure of all relevant information to the applicant, that calls upon the public body to then make a decision under section 74.

A Report of Findings identifies the public body but not the applicant and they are made available to the public, either by publication on the Commissioner’s Office website or to anyone requesting a copy from our Office.

A Report of Findings that carries recommendations requires the public body to act in one of two ways:

- accept and follow the recommendations (or in some cases, decide how best to implement), or
- refuse to follow the recommendations and notify the applicant and the Commissioner of such.
 - This triggers the applicant’s right to appeal before a Justice of the Court of Queen’s Bench under section 75.

FLOWCHART OF THE COMPLAINT RESOLUTION PROCESS



Complaint Resolution Process – Timelines

The *Act* allows the Commissioner to take all steps necessary to resolve informally or conclude her investigation with a Report of Findings within 90 days of receiving the complaint.

Our experience to date has shown that the informal resolution has been widely accepted and successful (4 out of every 5 complaint cases are resolved) but takes more time due to the interactive nature of the process.

Applicants are made aware in writing of extensions of time to conclude the investigation; however, we recognize that it is best to conclude complaints in a timely fashion. For this reason, we have embarked on a new approach to resolve complaint cases within 6 months in every case, wherever possible.

Revised: March 2015