

ACCESS TO INFORMATION AND PRIVACY IN THE WORKPLACE (BRITISH COLUMBIA): PROCESS GUIDE (PRIVATE SECTOR EMPLOYERS)

A. What is Access to Information and Privacy?

You have the right to ask your employer for personal information or documents that they have about you. Your employer also has to protect your privacy when they have personal information about you (for example, if you give your employer a medical note, they have to keep it private).

This guide is helpful if you want to get copies of personal or other information from your employer (these are “**access rights**”). This guide will also help if you want to know how your employer uses your personal information (these are “**privacy rights**”).

Is your employer public sector or private sector?

This guide is for people who work for **private sector employers**. Most employers are private sector employers, including businesses and non-profit organizations. **Public sector employers** are public bodies like governments, municipalities, health authorities, and police forces. There is a separate process guide for public sector employers: ACCESS TO INFORMATION AND PRIVACY IN THE WORKPLACE (BRITISH COLUMBIA): PROCESS GUIDE (PUBLIC SECTOR EMPLOYER).

Is your employer provincially or federally regulated?

This guide is for employees of **provincially regulated employers**. This covers most employers in British Columbia, but there are some exceptions, like banks, airlines, and Indigenous band councils. Different laws cover these employers. To understand if you work for a federally regulated employer, you can look here:
<https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>

1. Access Rights

a. What information do I have the right to get access to?

You have access rights to “**personal information**” that the employer holds about you. This includes documents, photos, images, reports, or other information that is specifically about you. This includes medical information or a disciplinary record about you.

If you ask, your employer has to give you a copy of all personal information about you that it has. The employer must also give you details about and tell you about how the information is being used, and whether it has been shared.

An employer does not have to give you this information if:

- the information is part of a private conversation between the employer and a lawyer (also called “solicitor-client privilege”)
- the information would harm the employer commercially

- the information was collected or disclosed without your consent as part of an investigation because otherwise the investigation would be compromised
- the information was collected or created by a mediator or arbitrator
- if giving you the information would cause safety or health risks
- if the information includes personal information about another person
- if the information would disclose the identity of someone who provided personal information about another person, and that person did not consent

Protecting the privacy of others:

When the employer gives you information, it has an obligation to remove the parts of the information that refer to other people, including the harasser. So if the employer has a report that is about you, but on one page or in one paragraph it mentions another person, the employer must remove that part of the information and give you the rest of the information. Sometimes, you will be able to see where information has been removed. The employer should also explain the section of the law that says they could remove that information.

b. How do I get this information?

You can write to your employer and ask for access to any personal information about you that is under your employer's control. You can refer to the "[*Personal Information Protection Act*](#)" of British Columbia (see also: <https://www.bclaws.gov.bc.ca>).

If there is a specific piece of information you are looking for, you can describe it, for example, you could ask for "my doctor's letter from March 2020." For a more general request, you can also ask for "all personal information concerning me that is under your control." You may also wish to add: "if you decide to withhold any personal information about me, please let me know what that information is, and explain the legal basis for withholding it."

If you are **making a request** to a **private sector employer**, the *Personal Information Protection Act* applies, and you can use the form available from the Office of the Information and Privacy Commissioner for British Columbia (OIPC): https://www.oipc.bc.ca/media/11769/form_access-request-private-organization.pdf

You do not have to use this form, but you can use it if you find it helpful.

c. What is the Office of the Information and Privacy Commissioner for British Columbia?

The [Office of the Information and Privacy Commissioner](#) (OIPC) is an independent agency that is responsible for enforcing British Columbia's access and privacy laws. It does not represent you or the employer, and it has the power to make orders under access and privacy laws.

Charging fees for access to personal information

If you have requested access to personal information about your employment, the employer is not allowed to charge fees. If you have requested personal information that is not about your employment, the employer is allowed to charge “minimal” fees. The fee is for basic costs, and the employer is not allowed to profit. If the employer wants to charge a fee, they have to give you an estimate first. If you think that you should not be charged a fee, or if you think the fee is not “minimal,” you can **make a complaint** to the OIPC. How to make a complaint is described here: [https://www.oipc.bc.ca/for-the-public/how-do-i-make-a-complaint/#:~:text=Put%20your%20complaint%20in%20writing,\(250\)%20387%2D5629](https://www.oipc.bc.ca/for-the-public/how-do-i-make-a-complaint/#:~:text=Put%20your%20complaint%20in%20writing,(250)%20387%2D5629)

d. How long does it take?

Under the *Personal Information Protection Act*, the employer must respond to you within 30 days of getting your request. The employer may give you the information you are asking for, or they may respond to tell you they need more time.

The law allows the employer to have another 30 days to respond in the following situations:

- if you have not given enough detail in your request
- if you have asked for a lot of information and the employer needs more time to find it all
- if the employer needs to talk to another organization before they give you your information

If the employer is taking an extra 30 days to respond, they must tell you the reason, and when you can expect to get the documents.

The employer may also give you partial information, and if so, they should explain why (for example, because the information talks about another person).

According to the *Personal Information Protection Act*, the employer has an obligation to assist you by trying to find the information, and to respond to you as completely as possible. If the employer cannot give you physical copies of your personal information, they should give you a chance to look at the documents. You can **make a complaint** to the employer if they do not respond to your request or give you the information.

e. Making a complaint to the employer

What if the employer does not respond to my request?

What if the employer does not give me the information, or charges fees that I disagree with?

What if I don't agree with the employer's delay in providing documents?

If you do not hear from your employer within 30 days after them receiving your request for access to personal information, or if they do not provide the information, or if you do not agree with their fees or their reason for delay, you should **make a complaint** to the employer in writing, letting them know why you disagree. You can use this form provided by OIPC to make a complaint to your employer:

<https://www.oipc.bc.ca/media/15566/howtofilecomplaintorganization.pdf>

If you have made a complaint to the employer and you still disagree, or the employer still does not respond, you can ask for a **review** from the OIPC. You must make a request for review **within 30 days** of when you receive the employer's decision. The 30-day requirement does not apply if the employer has not responded.

f. How do I ask for a review or make a complaint?

There is a form available on the OIPC website that you can use to ask for a review:

https://www.oipc.bc.ca/media/11781/form_piparequestreviewcomplaint.pdf

To complete this form, you will need to explain what you did to resolve your issue with the employer, including making a complaint (see **1 e. Making a complaint to the employer**). You will also need to attach a copy of the employer's "written decision." Note: this is not necessarily a formal decision, and it includes any letters from the employer where the employer told you what they were doing with your request. You will also need to attach your original request to the employer, as well as any other letters or emails between you and the employer about your request. You can send the form by mail, fax, or email. If you use mail, you should use registered mail or an Xpresspost envelope, so it is traceable.

g. What happens after you have filed a complaint at the OIPC?

You will receive a letter from the OIPC letting you know they have received your complaint. They will assign an officer to investigate your case. The investigating officer will ask you and the employer for more information and may make recommendations. The OIPC officer may refer you to mediation, in which you and the employer can try to find a settlement together. If you find a settlement that works for you and the employer, the process ends there.

If your issue is not resolved through investigation and mediation, you can make a request for the OIPC to start a process called an **inquiry**. If you are asking for an inquiry, you should get legal advice (see below for information on how to get free legal advice).

h. What happens in an inquiry?

You and the employer will receive a document called a "Notice of Inquiry." It includes basic information about your case. It will also include deadlines for you to provide **written submissions**. Written submissions means a letter from you explaining why you think you should win the case, based on the facts and the law. You will also receive a report from the previous investigator, explaining the facts of the case as the investigator understood them. If you have any new issues, you should ask the OIPC right away if you can add those new issues, and explain why you did not raise those issues earlier in the process. Also, if you need more time to write your submissions, you should ask the OIPC in writing as soon as possible.

The employer will make the first written submission. You will then have a chance to make a **written submission** that is in response to the employer, and your submission is called a **response submission**. The employer will then get a chance to make a **reply submission**.

When you are preparing your submission, you should attach any documents that you are relying on (copies of emails, letters, or other materials). If you need to make a statement about things that you saw or heard, you should put this information in a **statutory declaration**. A statutory declaration is a written statement about facts that you saw or heard directly, and you must take it to a notary public or lawyer

to affirm the truth of the facts in the document. You can get help with writing a statutory declaration from a lawyer (see below for information on how to get free legal advice).

More information about OIPC inquiries can be found here: <https://www.oipc.bc.ca/guidance-documents/1600>.

i. What are the possible outcomes of an inquiry?

After the OIPC receives all of the written submissions, an Adjudicator will make a decision on your case and send you and the employer a letter explaining the decision. If the Adjudicator decides in your favour, the Adjudicator can make orders for the employer to:

- provide you with all or part of the information you requested
- tell you how the employer used your personal information
- tell you the names of people and organizations that your information was shared with

If the Adjudicator makes an order for your employer to give you information, the employer has 30 days to do this (not counting weekends and holidays).

The Adjudicator does not have the power to award **damages** (money to compensate you). However, if you have suffered mental or physical harm, or costs, because of the employer's actions, you should get legal advice (see below for information on how to get free legal advice)

j. What if I disagree with the Adjudicator's decision?

There is no appeal process with the OIPC. If you disagree with the decision, you should get legal advice as soon as possible to understand whether you have options to ask a court to review the decision (see below for information on how to get free legal advice).

k. What if the employer punishes me for making a complaint to the OIPC?

If the employer fires you, suspends you, disciplines you, or otherwise punishes you because you talked to the OIPC about your employer's failure to respect your personal information rights, you should tell the OIPC, and you should seek legal advice (see below for information on how to get free legal advice).

2. Privacy Rights

In addition to the right to get **access** to your personal information, you have rights about:

- how your employer collects and uses your information; and
- correcting mistakes in your information

Consent

The issue of consent is important for understanding your privacy rights. You can find out more about how what consent means for privacy rights at the following link:
<https://www.oipc.bc.ca/guidance-documents/2255>

a. Collection of Personal Information

If an employer is collecting personal information about you, the employer must tell you why, either verbally or in writing. The employer must usually have your consent.

There are some **exceptions**:

- if the collection of information is in your interests and they cannot get your consent on time
- if the collection of information is necessary for your medical treatment, and you cannot give consent
- if there is an investigation that would be compromised by getting your consent for the collection of information
- if the collection of information is required or allowed by law
- if the information is already publicly available
- if the employer has as reasonable purpose in collecting the information, and the purpose is related to managing your employment relationship (when hiring you, while you are employed, or in terminating your position)

For a complete list, please see [Part 4 – Collection of Personal Information: section 12](#) and [section 13](#) of the *Personal Information Protection Act*, also available at: <https://www.bclaws.gov.bc.ca>.

b. Use of Personal Information

Like the collection of information, in general, your employer needs your consent and to tell you why they are using your personal information. There are some **exceptions**:

- if the use of information is in your interests and they cannot get your consent on time
- if the use of information is necessary for your medical treatment, and you cannot give consent
- if there is an investigation that would be compromised by getting your consent for the use of information
- if the collection of information is required or allowed by law
- if the information is already publicly available
- the use of information is necessary to respond to an emergency that puts someone's life, health, or security at risk
- the information is being used to manage your job or employment relationship (when hiring you, while you are employed, or in terminating your position), but in this case, the employer must let you know that it will be using your information, and why.

For a complete list, please see [Part 5 – Use of Personal Information: section 15](#) and [section 16](#) of the *Personal Information Protection Act*, also available at: <https://www.bclaws.gov.bc.ca>.

c. Disclosure of Personal Information

Disclosure of personal information means sharing your personal information. Usually, the employer needs to get your consent. There are some circumstances in which the employer is allowed to share information **without** your consent:

- if the sharing of information is in your interests and they cannot get your consent on time
- if the sharing of information is necessary for your medical treatment, and you cannot give consent

- if there is an investigation that would be compromised by getting your consent for the sharing of information
- if the information is already publicly available
- if the information is shared to determine if you are eligible for an award
- if the information must be shared by law or is allowed to be shared by law (including under a court order, or as part of a police investigation)
- if the information must be shared to contact next of kin in the case of death or illness
- the information is being shared to manage your job or employment relationship (when hiring you, while you are employed, or in terminating your position), but in this case, the employer must let you know that it will be sharing your information, and why.

For a complete list, please see [Part 6 – Disclosure of Personal Information: section 18](#) and [section 19](#) of the *Personal Information Protection Act*, also available at: <https://www.bclaws.gov.bc.ca>.

d. What if the information my employer has about me is wrong?

You have the right to correct the information. If you think the employer has incorrect information, you should write to the employer and ask them to correct it. If the employer agrees that the information is incorrect, they must correct it as soon as possible. If they do not agree, they must put a note on the information showing that you made a request to correct it.

e. What can I do if my employer does not respect these privacy rights?

First, you should try to resolve your complaint with the employer. You should write to your employer letting them know what the problem is. You can use this form to make your complaint directly to the employer: <https://www.oipc.bc.ca/media/15566/howtofilecomplaintorganization.pdf>.

If your issue is not resolved, you can **make a complaint** to the OIPC. The form is here: https://www.oipc.bc.ca/media/11781/form_piparequestreviewcomplaint.pdf. To complete this form, you will need to let the OIPC know what you did to try to resolve your issue with the employer, including making a complaint (see above: **1 e. Making a complaint to the employer**).

You should attach your form or letter of complaint to the employer, as well as a copy of any letters or emails you received from the employer. You can send the form by mail, fax, or email. If you use mail, you should use registered mail or an Xpresspost envelope, so it is traceable.

After you submit your complaint form, the process for privacy complaints is the same for access for personal information complaints described above under **1 g. What happens after you have filed a complaint at the OIPC?**

f. How do access and privacy rights interact with other options?

Access and privacy rights do not give you a **remedy** for sexual harassment. There are other processes, like workers' compensation, employment standards, human rights and wrongful dismissal lawsuits that might apply to your situation. Please refer to our other process guides for the various available **remedies** to consider which ones are best for you.

B. Where can I get more help with this?

Detailed process guides on other topics are available at: [Stand Informed Resources](#).

You can get free legal advice at:

Law Students' Legal Advice Program (LSLAP)

This program provides free legal advice and representation (by supervised law students) in the Lower Mainland.

Call: 604-822-5791

Website: <https://www.lslap.bc.ca>

Access Pro Bono

This program provides free summary advice from a lawyer, as well as several other legal assistance programs.

Call: 604-878-7400 or 1-877-762-6664

Email: appointments@accessprobono.ca

Website: <https://accessprobono.ca>

You can also **find advocates** across BC by using PovNet's "Find an Advocate" Tool, available online: <https://www.povnet.org/find-an-advocate>.

Other Resources:

BC Civil Liberties Association: Privacy Handbook

<https://bccla.org/privacy-handbook/index.html>

Office of the Information and Privacy Commissioner: Guidance Documents

<https://www.oipc.bc.ca/resources/guidance-documents/>

Office of the Information and Privacy Commissioner: Privacy Webinars

<https://www.oipc.bc.ca/privacyright/webinars/>

Office of the Information and Privacy Commissioner: Forms

<https://www.oipc.bc.ca/forms/individuals/>

Office of the Information and Privacy Commissioner: Rulings (Decisions)

<https://www.oipc.bc.ca/rulings/orders/>

Peoples' Law School: Your Privacy Rights At Work

<https://dialalaw.peopleslawschool.ca/privacy-rights-at-work/>

Government of BC: Guide to the *Personal Information Protection Act*

<https://www2.gov.bc.ca/assets/gov/business/business-management/protecting-personal-information/pipa-guide.pdf>