

ACCESS TO INFORMATION AND PRIVACY IN THE WORKPLACE (BRITISH COLUMBIA): PROCESS GUIDE (PUBLIC 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 the employer has personal information about you (for example, if you give your employer a medical note, they must 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 **public sector employers** (also known as **public bodies**). Most employers are **private sector employers**, including businesses and non-profit organizations. There is a separate process guide for private sector employers: ACCESS TO INFORMATION AND PRIVACY IN THE WORKPLACE (BRITISH COLUMBIA): PROCESS GUIDE (PRIVATE SECTOR EMPLOYERS).

Public sector employers are public bodies like governments, municipalities, health authorities, and police forces. You can find out if your employer is a **public body** by looking at the list in “[Schedule 2](#)” at the bottom of British Columbia’s [Freedom of Information and Protection of Privacy Act](#), also available here: <https://www.bclaws.gov.bc.ca>.

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 important exceptions, such as banks, airlines, and Indigenous band councils, which are **federally regulated employers**. 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 the 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 such as 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.

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”)
- giving you the information could be harmful:
 - to government operations or to a public body
 - to a police investigation or other law enforcement, or security-related issues
 - to public safety or to the safety of an individual
 - to the financial interests of a third party
 - to the privacy of another person

Protecting the privacy of others

When the employer gives you information, they have 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 my personal information from an employer?

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 say that you are asking for access to your personal information under their control under the “[Freedom of Information and Protection of Privacy Act](#)” of British Columbia.

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.” 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.”

You can also use this link: <https://foirequestform.gov.bc.ca/>

Access to general information from public sector employers

People also have the right to ask for access to information from public sector agencies, even if they don’t work there. For example, people can get access to policy documents or statistics that the public sector agency holds. This guide does not cover this, but you can find out more here: <https://www.oipc.bc.ca/for-the-public/how-do-i-request-records/>.

c. Charging fees for access to personal information.

If your employer is a public employer, they cannot charge fees if your request is only for access to your own personal information. If you make a request for other records from a public body, they are allowed to charge fees. For more information on requesting access to other records (not your own personal information) from a public body, please see the following guide by the Office of the Information and Privacy Commissioner for British Columbia: <https://www.oipc.bc.ca/guidance-documents/2073>

d. 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.

e. How long does it take?

Under the BC *Freedom of Information and Protection of Privacy 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 for the delay, and when you can expect them to provide the documents.

According to the BC *Freedom of Information and Protection of Privacy 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 from OIPC for making a complaint to the employer:

https://www.oipc.bc.ca/media/11772/form_complaint-to-public-body.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/11778/form_oipc-privacy-complaint-fippra.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 to 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. The Notice of Inquiry 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 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
- 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 is only allowed to collect information that is reasonable in the circumstances and must usually collect the information from you directly.

There are some **exceptions** when the employer can collect information in a different way, instead of directly from you, for example:

- if it is necessary to manage your employment relationship
- if you give consent
- if the OIPC makes an order
- if another law allows it or if it is for law enforcement reasons
- if it is medically necessary

For a complete list, please see [section 27](#) of the *Freedom of Information and Protection of Privacy Act*, also available at: <https://www.bclaws.gov.bc.ca>.

b. Use of Personal Information

An employer can only use your personal information for the reasons that it originally collected that information. If the employer wants to use your information for another reason, they have to ask for your consent.

c. Disclosure of Personal Information

Disclosure of personal information means sharing your personal information. An employer can only share your personal information in certain circumstances. Here are some examples:

- if it needs to share this information in order to get legal advice
- to comply with a court order or police investigation
- in order to reduce the risk of domestic violence to an individual
- to notify next of kin in the case of a person's injury or death

For a complete list, please see sections [33](#), [33.1](#) and [33.3](#) of the *Freedom of Information and Protection of Privacy 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/11772/form_complaint-to-public-body.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/11778/form_oipc-privacy-complaint-fippa.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 to the employer (see **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 complaints, which are described above under **1 g. What happens after you have filed a complaint to 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>.

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/>