

Investigation Process: Correction complaints

Section 69 of the *Personal Health Information Privacy and Access Act*

The purpose of the Commissioner's authority to accept and investigate complaints about how a custodian has handled a person's request to correct his or her own personal health information is to provide for an independent review and resolution of complaints under the *Act*.

Section 15 of the *Act* grants individuals the right to make a request to custodian to correct his or her personal health information, so long as he or she has the right to examine and copy that same information. This is intended to ensure that an individual's personal health information is accurate and complete and that the care that he or she receives is based on up-to-date and correct information.

Upon receipt of a correction request, a custodian must review it and decide whether it will make the requested correction to the individual's personal health information. If the custodian refuses to make the requested correction, it must allow the individual to file a statement of disagreement that will be added to his or her health record, and the individual has the right to file a complaint with our Office about the refusal under s. 68 of the *Act*.

Complaints to our Office must be made in writing and must be filed with our Office within 60 days after the date that the individual was notified of the custodian's decision. The Commissioner may allow a longer period for filing a complaint in appropriate circumstances.

Investigation process

69(1) On receiving a complaint the Commissioner shall, in accordance with this Act and the power, authority, privileges, rights and duties vested in the Commissioner under the *Right to Information and Protection of Privacy Act*, investigate the matter referred to the Commissioner or shall take steps to resolve the complaint informally under subsection (2).

69(2) The Commissioner may take any steps the Commissioner considers appropriate to resolve a complaint informally to the satisfaction of the parties in a manner consistent with the purposes of the Act.

69(3) If the Commissioner cannot resolve a complaint within 45 days after the commencement of the informal resolution process referred to in subsection (2), the Commissioner shall review the decision of the custodian and shall prepare the report referred to in section 73.

Upon receipt of a correction complaint, we will first review the information provided to verify whether we have jurisdiction to investigate the complaint (is the complaint about a custodian that is subject to the *Act*?), whether the complaint documentation is complete, and whether the complaint was made to our Office in a timely fashion.

Once we have determined our authority to investigate the complaint, we will send a copy of the correction complaint to the custodian in question. At that time, we will also ask the custodian to provide us with a response to the complaint, which may include asking for explanations as to why it decided not to make the requested correction and may ask that a copy of the information in question be provided for our review.

Informal resolution

Our Office will take any steps we consider appropriate to informally resolve the complaint through discussions with both the custodian and the person who filed the correction complaint. The informal resolution process begins once we have received the custodian's response to our notice of complaint, following which we have 45 days to resolve the complaint informally.

If, based on our review and discussions with the custodian and the person who filed the correction complaint, both parties to the complaint are satisfied with the informal resolution, the matter is successfully resolved and we will close our file.

If not informally resolved, matter is remitted to the Commissioner

If the complaint is not informally resolved within 45 days from the start of the informal resolution process, the matter will be remitted to the Commissioner for final disposition. The Commissioner will review the matter with a view to determine whether a formal investigation is merited or if it would be appropriate to refuse to investigate under s. 70 of the *Act*. For example, the Commissioner may refuse to or cease to investigate a complaint if, having regard to all the circumstances of the case, further investigation is unnecessary (which will usually be the case where our Office is satisfied that the custodian has responded adequately to the complaint through the informal resolution process).

If the Commissioner decides to proceed with a formal investigation, the Commissioner will review the matter and allow the parties to the complaint, as well as any other person the Commissioner considers appropriate, to make representations. On completing an investigation, the Commissioner will prepare a report with the Commissioner's findings and may recommend that the custodian grant the correction request in whole or part.

The Commissioner's investigation is to be completed and a report made under s. 73 of the *Act* within 90 days after a complaint is filed with our Office; however, the Commissioner has the authority to extend the time limit to do so of his or her own accord so long as the Commissioner notifies the parties and anyone who has made representations of the anticipated date for providing the report.

Upon completion, the Commissioner must provide a copy of the report to both the custodian and the person who filed the correction complaint.

Complying with the recommendation

If the Commissioner's report contains a recommendation to the custodian, the custodian must decide whether it will accept the Commissioner's recommendation or not and notify the person who made the complaint of its decision, with a copy to our Office.

If the custodian accepts the recommendation, the custodian shall either comply with the recommendation or make another decision that the custodian considers appropriate, within 15 days after receiving the Commissioner's report.

If the custodian decides not to accept the Commissioner's recommendation, the person who made the complaint has the right to appeal the matter to a judge of the Court of Queen's Bench under s. 75 of the *Act* and in accordance with the Regulations under the *Act*.

If the custodian fails to notify the individual of its decision within 15 days after making his or her decision, the failure is to be treated as a decision not to accept the Commissioner's recommendation, thus triggering the appeal rights under s. 75 of the *Act*.

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