

Privacy Act Investigations: an outline of our complaint process

The Office of the Privacy Commissioner (OPC) investigates complaints from the public about privacy breaches. Throughout an investigation, we look for opportunities to encourage the parties to a complaint to resolve the issues in a way that is acceptable to them.

1. Is an investigation necessary?

The first step after OPC receives a complaint is to see whether a full investigation is necessary. This usually involves talking to the complainant. Sometimes we will also need to talk to the agency being complained about.

There are a number of reasons we may choose not to investigate a complaint. Sometimes we receive complaints about issues that are not covered by the Privacy Act. In those cases, we may put the complainant in touch with other agencies who may be able to help.

We may also decide not to investigate if:

- the incident happened too long ago
 - the complaint relates to a personal or family dispute
 - there is a better way of dealing with the matter
 - there is another complaints procedure which needs to be followed first
 - the complaint is about a breach of someone else's privacy.
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2. Investigating the complaint

When we begin an investigation we notify both parties, and tell them which principles of the Privacy Act may have been breached and how.

We conduct investigations by talking to the parties in person, by telephone, email or letter. Sometimes we ask parties to meet to discuss the complaint.

Both parties need to provide us with copies of relevant documents and information.

During an investigation we may form an opinion about how the Privacy Act applies to the facts of the complaint. If we have formed an opinion against one party, we will give them the chance to respond. We do this to help the parties understand how we see the complaint, and to help them work towards a solution to the dispute. Our opinion is not binding and nobody is obliged to accept it.

Sometimes a full investigation is not necessary or appropriate. In those instances, we may decide to discontinue the investigation. The complainant has the chance to comment before we do this.

3. Settling and closing the complaint

Throughout the investigation we will look for opportunities to settle the complaint in a way that satisfies both parties.

If we cannot settle the complaint, or the investigation is discontinued, we will advise you of our final view.

4. When the investigation is completed

If we believe a complaint has substance, but the parties have been unable to settle, we may refer it to the Director of Human Rights Proceedings, who can choose whether to bring the case before the Human Rights Review Tribunal. The Director is completely independent from OPC.

If we do not think the complaint has sufficient substance to refer it to the Director, we will close it and we can give you a certificate of investigation.

5. What is the Human Rights Review Tribunal?

The Tribunal is an independent judicial body that considers and decides on claims brought before it. It is completely separate from OPC. The Tribunal will look at each case on its own merits. Any earlier legal opinions, such as those from OPC, are not taken into account.

You can take your case to the Tribunal only after OPC has notified the agency, investigated your complaint and has closed your case file. If OPC has **not** notified the agency and investigated your complaint, you will **not** be able to take a case to the Tribunal. If we do not investigate your case you cannot take it to the Human Rights Review Tribunal.

6. What information do I have to provide to the Tribunal?

You will need to give the Tribunal a certificate of investigation from OPC. That certificate is the only piece of information that the Tribunal looks at from our investigation. If you do not have a certificate, please ask us for one. If we have investigated your complaint we can give you one.

7. Frequently asked questions

"Is the Commissioner on my side?"

OPC is impartial and does not take sides. We are independent of Government.

"Can the Commissioner order the agency to pay money?"

No. We can make agencies give us documents, but we cannot force them to pay you.

"Does the Commissioner make legal rulings?"

We do not make rulings or determinations. However, our opinion is an important indication of whether there has been a breach of the Privacy Act. Our views are taken seriously.

"Do I have a right to see everything on the file?"

No. In order to conduct effective investigations, both parties need to be able to speak to us openly and frankly, and anything you say to us is protected by law. For this reason, we do not share the actual correspondence we receive. We make sure that both the complainant and respondent know what we are investigating and why.

"How long will the investigation take?"

This depends on how complex the issues are, and how quickly we get the information we need. We close most investigations within six months, but occasionally they take longer.