

### **Available remedy**

We may decline or discontinue investigation of a complaint where the law or an existing administrative procedure sets out an available process that may provide an adequate remedy for the complaint. This may include review or complaint processes that are established in policy or legislated review or appeal processes with limited grounds that are not considered to be “on the merits” (see “Pre-empted” category above). Before we decline a complaint based on a referral to an available process, we first consider the applicability of that process to the specific issues raised in the complaint as well as whether the complainant has any reasonable basis for not pursuing the referral. Considerations in this regard may include the urgency of the matter or the complainant’s capacity to pursue the referral in the circumstances.

### **Can consider without further investigation**

This section is used to discontinue an investigation when, upon consideration of the circumstances and the available evidence, we reach a conclusion that further investigation is not necessary.

### **Complaint abandoned**

We may decline or discontinue investigation of a complaint when the complainant will not respond to our attempts to contact them or where the person refuses to provide appropriate contact information.

### **Complaint investigations**

When we investigate a complaint, we notify the authority being investigated.

This notice includes the essential details of the complaint and the identity of the complainant. Investigations may conclude with a determination that a complaint is not substantiated, or with a negotiated settlement of the complaint, or with public findings and recommendations. We may also exercise discretion to cease investigation for a number of other reasons specified in the *Ombudsperson Act*.

### **Complaint settled**

We may cease investigating a complaint when we have achieved a settlement of the complaint. The *Ombudsperson Act* provides specific authority for the Ombudsperson to consult with authorities to attempt settlement of complaints once an investigation is commenced. When an investigation leads us to conclude that action on the part of the authority is required to resolve the complaint, we try to achieve that resolution by obtaining the voluntary agreement of the authority to settle the complaint. This allows matters to be resolved fairly for the complainant and authority without requiring a formal finding of maladministration.

### **Complaint withdrawn**

We may decline or discontinue investigation of a complaint when the complainant indicates that they do not wish us to proceed with in an investigation. This may be used to close a complaint file when the complainant has achieved a resolution of the matter through their own efforts after filing a complaint with our office.

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### **Complaints with no investigation**

Our office does not investigate every complaint it receives. First, we have to determine whether we have authority to investigate the complaint under the *Ombudsperson Act* and whether other legislation may limit our authority. We also have discretion to decline to investigate for reasons specified in the *Ombudsperson Act*. We share the details of a complaint and the identity of complainants with an authority only when we investigate the complaint. The details of complaints closed without investigation are kept confidential and we report only statistical summary information on non-investigated files to authorities and the public through our quarterly and annual reports.

### **Early Resolution investigations**

Early Resolution investigations provide an expedited process (generally within two weeks) to deal with complaints when an opportunity appears to exist for the authority to take immediate action to resolve less complex issues, before we enter into a full, formal investigation. Typical issues that are addressed through Early Resolution include timeliness, communication, and opportunities for internal review.

### **Enquiry**

Many people who contact us indicate that they are not calling to make a complaint, but are seeking information or advice. They may be gathering information about our process or available review options in anticipation of a future complaint, seeking advice about how to approach a dispute, or simply looking for information about a government program. These contacts are classified as Enquiries to distinguish them

from Complaints which are requests that our office investigate.

### **Frivolous/vexatious/trivial matter**

We may decline or discontinue investigation of a complaint where we conclude it is frivolous or vexatious, not made in good faith, or concerns a trivial matter. In practice this provision is used extremely rarely.

### **Insufficient personal interest**

We may decline or discontinue investigation of a complaint when the person who makes the complaint is not the person primarily affected by it, and does not have sufficient personal interest in the matter. Sometimes friends or relatives make a complaint on behalf of the person directly concerned without the person's knowledge or consent. In these cases we ask the person making the complaint to get consent from the person directly affected before we will accept their complaint. This category is also used when individuals make complaints about matters discussed in the media that they believe indicate government wrongdoing but do not have a direct personal interest in the matter. An investigation on the Ombudsperson's own initiative may be considered in these circumstances if an investigation appears to be in the public interest.

### **More than one year between event and complaint**

We may decline or discontinue investigation of a complaint arising from a matter that occurred more than one year before we receive the complaint. However, we carefully review such cases to determine whether an investigation should still be carried out, and typically only decline an investigation under this

provision where there are evident difficulties in investigation arising from the delay in the complaint being made to our office.

### **No benefit to complainant or person aggrieved**

We may decline or discontinue investigation of a complaint when we are able to conclude that commencing or continuing an investigation would not benefit the complainant or person aggrieved. This may include circumstances where we are able to conclude based on evidence available before commencing an investigation that the complaint will not be substantiated. It may also include complaints where no corrective action beyond what has already occurred is merited even if investigation may confirm a technical error or other flaw in the administrative process. We may also conclude that there is no benefit to continuing an investigation when all available evidence has been reviewed but is insufficient to support either a determination of fault or error on the part of the public authority that would justify corrective action, or a conclusion that the complaint is not substantiated.

### **Not a matter of administration**

The Ombudsperson has jurisdiction to investigate decisions or recommendations made, acts done or omitted, or procedures used by public authorities. These are referred to as “matters of administration” to distinguish them from the functions of the legislature or the courts. While most complaints about a public authority relate to one of these matters, a small number of complaints are closed on the basis that they do not relate to an identifiable matter of administration.

### **Not substantiated**

When the evidence obtained in a complaint investigation leads us to a clear conclusion that an authority has not acted unfairly with respect to the matter under investigation, we make a finding that the complaint is not substantiated.

### **Ombudsperson Initiated investigations**

The Ombudsperson has the authority to initiate investigations independently from our process for responding to complaints from the public. These investigations may be ceased at the discretion of the Ombudsperson or concluded with formal findings and recommendations.

### **Pre-empted by existing statutory right of appeal, objection or review**

Our jurisdiction to investigate is limited where there is a right of appeal, objection or review on the merits of the case available in respect of the matter complained about. The right itself, as well as the court or tribunal that hears the appeal or objection or conducts the review, must both be established under a statute or regulation. The appeal, objection or review must also be “on the merits” of the case, meaning that processes where the review is limited to errors of law or procedural fairness do not trigger this limitation. As a result the availability of judicial review or internal complaint mechanisms created by policy do not limit our jurisdiction.

### **Refused/Investigation ceased (discretion)**

The Ombudsperson Act sets out a number of circumstances in which we may exercise discretion to either decline to investigate a complaint or discontinue an investigation after it has started.

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### **Statute barred**

There are a small number of statutes that specifically limit the jurisdiction of the Ombudsperson to investigate. While most of these limitations are specific to particular authorities, the *Freedom of Information and Protection of Privacy* (FIPPA) specifically limits the Ombudsperson's authority to investigate matters relating to the administration of that act. Complaints about authorities that relate to FIPPA are closed under this category and referred to the Office of the Information and Privacy Commissioner.

### **Substantiated**

When a complaint investigation leads us to conclude that action on the part of the authority is required to resolve the complaint, and we are unable to reach a voluntary agreement to settle the complaint with the authority, the Ombudsperson may exercise the authority under the *Ombudsperson Act* to make formal findings of administrative unfairness and make formal recommendations on the basis of those findings. The Ombudsperson may also report those findings and recommendations and the basis for them in a public report to the legislature. The specific authority for the findings and recommendations that may be made by the Ombudsperson is set out in section 23 of the *Ombudsperson Act* and explained in more detail in our *Code of Administrative Justice* which is available on our website.

### **Voluntary referral**

Some complaints are brought to us when the matter at issue is at an early stage and there may be opportunities for the complainant to resolve their concerns by raising them directly with the staff of the authority. When there is no specific

formal process available to the complainant to do so, we may suggest other avenues such as contacting a supervisor about service complaints, or writing a letter to a senior official. If a complainant agrees to postpone their complaint to pursue such an opportunity, we close the complaint as a voluntary referral.