Submission to the Statutory Review of ATIPPA, 2015

Conducted by Keri-Lynn Power

Submission 1 of Multiple — [redacted]

August 17, 2026

Submitted by:

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Executive Summary

[redacted]. This submission documents five structural gaps in ATIPPA, 2015 that became evident during access complaint [redacted] which produced [redacted] on May 28 2026, and during my attempt afterwards to obtain a single administrative record through a new access request. It proposes nine legislative amendments. It does not ask this Committee to revisit any complaint outcome. Every amendment is forward looking.

[redacted]

The five gaps.

1. **Section 9 engagement.** The Act does not require the Commissioner's report to explain why specific documented public interest arguments failed. A complainant who submits detailed evidence receives the same one sentence as a complainant who submits none.
2. **Search adequacy.** The Act does not require the report to address a specific, verifiable factual challenge to a search. I identified that the search period began a full year after the release of the Auditor General report most relevant to my request. The report did not address it.
3. **Access to the Section 9 analysis.** A complainant has no right to see the public body's Section 9 reasoning, and no practical route to obtain it afterwards. This gap produced

five of the nine amendments because the attempt to obtain the record revealed a second layer of problems in how Section 21 operates.

4. **Solicitor-client self-certification.** Records withheld entirely under Section 30 are verified by the public body's own solicitor. No independent review occurs, and severability under Section 8(2) is never confirmed.
5. **Corroborative evidence.** The Act does not require the Commissioner to consider whether records already disclosed in the file corroborate the complainant's public interest arguments. [redacted]

[redacted]

[redacted] Filing a complaint therefore left me with fewer access rights than if I had never complained at all. That outcome is not in the statute; it is what the statute currently permits.

What I ask. That the Committee consider the nine amendments set out below, and in particular that Section 21 be amended so that a disregard cannot rest on an applicant's use of the oversight process, cannot withhold from one applicant a record disclosable to everyone else, and cannot be issued without dated, reasoned and accurate notice.

Purpose of This Submission

This submission identifies five structural gaps in ATIPPA, 2015 [redacted] This is the first of multiple separate submissions I intend to provide to this review; each addresses specific provisions of the Act and proposes specific amendments.

Gap 3 produced five of those nine amendments rather than one. My attempt to obtain the Section 9 analysis through a direct access request after the complaint closed revealed a second and deeper layer of structural problems. The disregard of that request, and the Commissioner's responses when I challenged it, document how the complaint process and the access right can operate against each other in ways the legislature cannot have intended.

[redacted] It does not ask this Committee or the Independent Reviewer to revisit, reopen or alter the outcome of any complaint, report or proceeding. [redacted] serve to illustrate how Sections 9, 21, 29 and 30 are applied in practice, and where practice falls short of the purpose stated in Section 3. Every proposed amendment is forward-looking, directed at ensuring that future applicants receive purpose-blind, accessible and transparent oversight under the Act. Why the characterisation of access request [redacted] as re-litigation is a legal error is addressed in Gap 3, [redacted]

[redacted] My experience [redacted] is a ground level view of how ATIPPA, 2015 operates for an ordinary citizen dealing with a government department that controls both the records and the process for accessing them.

[redacted]

Gap 1 — The Relaxed Burden Under Section 9 Requires Specific Engagement With Each Argument

The Legal Framework

Mastropietro v. Newfoundland and Labrador (Education), 2016 NLTD(G) 156, establishes that the onus of demonstrating that the public interest in disclosure outweighs the reason for the exception under Section 9 rests with the party seeking access. However, the court also held at paragraph 47 that this onus cannot be absolute but must be relaxed somewhat in a situation where the applicants have not had the benefit of reviewing the document on which they are required to make submissions as to whether the public interest override should prevail.

Report [redacted] acknowledged this relaxed burden. It then concluded in one sentence that the burden had not been met without engaging with any of my four specific documented accountability arguments. A relaxed burden that produces no engagement with the specific evidence a complainant provides is indistinguishable in practice from an absolute burden.

[redacted]

[redacted]

Why This Is a Structural Gap

The Act contains no requirement that the OIPC explain why specific documented public interest arguments raised by a complainant failed to meet the relaxed burden. A bare conclusion satisfies the current statutory requirements. That means a complainant who provides four specific documented accountability arguments grounded in independent evidence including the Auditor General's own findings receives exactly the same outcome as a complainant who provides no evidence at all. The relaxed burden is meaningful only if the OIPC is required to engage with the specific arguments and explain why each fails. Ontario has addressed the same asymmetry by requiring its Commissioner to examine the records directly rather than leaving the applicant to carry a burden they cannot discharge unseen. That comparison is set out under Gap 5.

[redacted]

> *When considering the public interest limitation on the exception, the bar is whether is Public Body considered section 9 and in this case they did.*

If that is the bar, Section 9 imposes a procedural step and nothing more. A public body satisfies it by turning its mind to the question and recording that it did so. What the analysis contains, which factors were weighed, and whether the complainant’s documented arguments were engaged with at all become irrelevant to the outcome. That is not what the provision says. Section 9(1) provides that a discretionary exception shall not apply where it is clearly demonstrated that the public interest in disclosure outweighs the reason for the exception. That directs a comparison, not a confirmation that a comparison occurred.

The same correspondence confirmed that the Department's initial submissions to this Office contained an analysis of Section 9. What that analysis contains, and when it was created, has never been disclosed to me. It may be a record made at the time the Department applied the exemptions, in which case it is the record [redacted] sought. It may be something prepared later, for the purposes of the complaint. I have no way of knowing which, because I have never seen it, and the disregard of [redacted] removed the route by which I could have asked the Department for it. The uncertainty is not incidental to this gap. It is the gap.

The Ontario standard cited in Mastropietro at paragraph 48 states that for the public interest override to apply the information must serve the purpose of informing the citizenry about the activities of their government. [redacted]

The same passage of *Mastropietro* addresses the objection that an applicant's own stake in a matter defeats a public interest claim. Setting out the Ontario framework, the Court records that a public interest does not exist where the interests being advanced are essentially private, but that where a private interest in disclosure raises issues of more general application, a public interest may be found to exist. [redacted]

There is a further contrast worth drawing. In *Mastropietro* the Court dismissed the public interest argument in part because no evidence of public interest was put before it, and observed that an applicant advancing such an argument would be well advised to present evidence. I did present evidence. [redacted] received. That is the gap this section identifies. The Act attaches no consequence to the difference between an applicant who submits evidence and one who does not.

The Decision I Was Asked to Make Without the Analysis

The absence of the Department's Section 9 analysis was not only a fairness problem in the abstract. It had a practical consequence at a specific decision point in the complaint.

After the preliminary assessment was issued I was asked whether I would resolve the complaint informally. Section 44(4) makes that the complainant's decision. To make it properly I needed to know what I would be accepting: whether the Department had conducted a documented public interest analysis at all, what factors it had weighed, and whether the assessment I was being asked to accept had engaged with the arguments I had made. I knew none of those things. I had a conclusion and nothing else. I had also identified a specific, verifiable factual error in the secondary search date range and raised it in writing before the report was issued. It was not addressed at the informal stage, and it was not addressed in the report.

[redacted] An applicant deciding whether to accept an informal resolution is being asked to consent to an outcome whose reasoning has never been disclosed to them. Amendments 3 and 3B would change that. A complainant who has seen the public body's Section 9 analysis can weigh an informal resolution on its merits. A complainant who has not is consenting to something they cannot see.

Proposed Amendment 1 — Mandatory Engagement with Documented Public Interest Arguments

Insertion target: Amend Section 47 (Report of Commissioner). Section 47(2.1) Duty to Address Section 9 Submissions. Where a complainant submits specific documented arguments under Section 9 establishing how disclosure serves the public interest the commissioner's report shall individually address each argument. The report must set out explicit reasons explaining why each argument fails to meet the relaxed burden established in *Mastropietro v. Newfoundland and Labrador (Education)*, 2016 NLTD(G) 156. A generalized finding that the burden was not met shall not satisfy the requirements of this Act where specific documented arguments were submitted.

Gap 2 — The Act Does Not Require the OIPC to Engage With Specific Factual Challenges to Search Adequacy

[redacted]

[redacted]

Why This Is a Structural Gap

The OIPC's search adequacy standard requires a reasonable search but does not require the OIPC to engage with specific factual challenges to the search methodology raised by the complainant before the report is issued. [redacted] The report can accept the search as reasonable without addressing the specific factual concern.

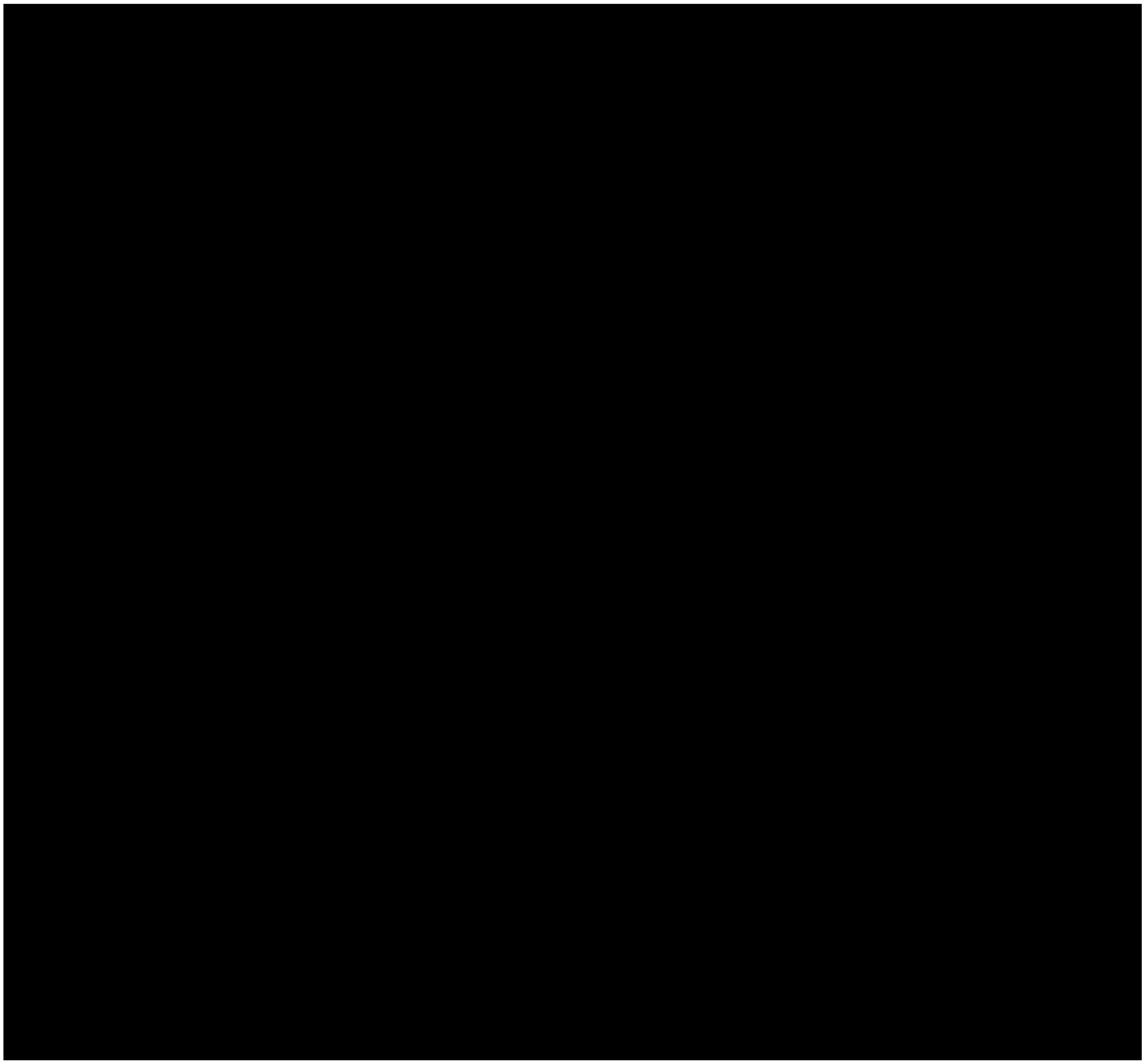
[redacted] A report that accepts a search as reasonable without addressing a specific and verifiable factual challenge to the search period is not providing the independent oversight the Act is supposed to deliver.

Proposed Amendment 2 — Specific Adjudication of Search Adequacy Challenges

Insertion target: Amend Section 47 (Report of Commissioner). Section 47(2.2) Adjudication of Specific Search Challenges. Where a complainant submits a specific verifiable factual challenge regarding the adequacy of a search including challenges to the search timeframe missing repositories or excluded keywords the commissioner's report shall specifically evaluate that factual challenge on the record. The report shall not issue a finding that a search was reasonable without explicitly addressing and resolving the specific factual defects raised by the complainant.

Gap 3 — The Complainant Has No Right to the Public Body’s Section 9 Analysis

[redacted]



Why This Is a Structural Gap

Mastropietro at paragraph 47 specifically acknowledged that the relaxed burden exists because applicants have not had the benefit of reviewing the document on which they are required to make submissions. The same principle applies to the public body's Section 9 reasoning. A complainant who does not know what factors the public body weighed cannot meaningfully respond to that reasoning. The OIPC assesses the public body's Section 9 analysis against the complainant's arguments without the complainant ever knowing what that analysis said.

This creates a one-sided process. The public body provides full reasoning to the OIPC. The complainant provides arguments to the OIPC. The OIPC compares them. The complainant receives only the outcome. In my case the Department's Section 9 analysis existed in the OIPC file. I never saw it. I was assessed against reasoning I was never shown. That is not the procedural fairness the Act is supposed to provide.

The core problem is this. I participated in a process where the Department provided the Office with its full reasoning and I was given only the conclusion. The Office then assessed my arguments against the Department's reasoning without ever disclosing that reasoning to me. It is the equivalent of a referee hearing one side fully and then telling the other side simply to trust that the first side had a good argument, without showing what that argument is, and then asking that side to accept the outcome. That is not a fair process in any context, formal or informal. ATIPPA, 2015 should not permit it in the Section 9 process.

[redacted]

[redacted]

[redacted] First, the Act sets no deadline for telling the applicant. Every other step is on a clock. Section 21(1) gives the public body five business days from receipt to apply. Section 21(2) requires the Commissioner to decide without delay and in any event not later than three business days after receiving the application. The Office's own guidance describes the whole process as an eight business day period. [redacted]

[redacted] The Act times every step except the one that involves the applicant. Second, the applicant cannot verify compliance. I have never been told the date the disregard application was filed or the date it was approved, and neither the notice nor any subsequent correspondence discloses either date. A deadline that only the two institutions bound by it can see is not an accountability mechanism. Third, no one explains the decision. The Commissioner's position, stated in the same email, is that this Office does not comment on the reasons behind its disregard decisions beyond what the public body provides in its notice. The public body's notice supplied one sentence. The office that gave the reason will not explain it, and the office that approved it will not go beyond the reason given.

That refusal is not confined to this file or to this decision-maker. [redacted] What is described as a discretionary reticence in any single case is, across cases, a settled practice, and it is the reason Amendment 3D requires the Commissioner to give written reasons.

[redacted] the Office described what it understood to be the ordinary course after a disregard: that a person whose request has been disregarded will often go back to the public body with a revised request, and that even when it approves an application to disregard, it will often encourage the public body to invite the requester to file a new, revised request. No such invitation appears anywhere in the notice I received for [redacted]. Second, the Office advised me that filing a new access request should result in a much more timely outcome than court. [redacted] was a single, narrowly drawn request for one document, filed in that spirit. It was disregarded.

There is one further defect in the notice itself that I ask the Committee to look at, because it is a problem with a standard government form rather than with this file. The Form 4E notice told me I could ask the Information and Privacy Commissioner to review the processing of my access request under Section 42, within fifteen business days. Reproduced inside the same letter, four pages later, is Section 42(8)(a), which states that a complaint shall not be filed with respect to a request that is disregarded under Section 21. The letter offers a remedy that the statute printed within it forecloses. A citizen who followed the first page would file a complaint that cannot be filed and would consume the fifteen business days available for the only route that does exist, a direct appeal to the Trial Division under Section 52. That matters here because the Commissioner twice faulted me for not appealing.

What Happened When I Challenged the Disregard

[redacted]

[redacted]

Her response did not identify any provision of ATIPPA, 2015 under which the Section 9 analysis is exempt from disclosure. That absence is significant. If a substantive exemption existed it could have been named. [redacted]

[redacted]

[redacted]

Section 21(1)(c) permits disregarding a request that is objectively unduly repetitive or systematic. It does not permit disregarding a request because the Commissioner infers an improper motive. That a stated reason shifts under challenge is not by itself what should concern the committee. What should concern the committee is that nothing in the Act prevented it. There are no written reasons required for a disregard approval, no internal review, and no obligation on the approving Office to explain itself. Where there is no fixed boundary, the boundary becomes whatever justification best supports the outcome already reached.

The question of what an applicant intends to do with a record is separate from whether the applicant may have it. Section 8(1) gives citizens the right to access records. It does not require citizens to justify their intentions and it does not permit an assessment of whether a citizen's purpose meets institutional approval before a request may proceed. Blocking access in advance based on an assumed intention is pre-emptive, not administrative. Even if the Commissioner genuinely believed my purpose was to challenge [redacted] the proportionate institutional response was to process the request and, if I later tried to reopen the complaint, decline to reopen it. The file is closed. That is a complete answer to any subsequent challenge. Blocking the record itself on the basis of assumed intent is a different and more aggressive step, and it uses a procedural tool to achieve a result no substantive exemption was ever shown to authorise.

No provision of Division 2 of Part II exempts a record on the ground that the applicant's purpose is one the Commissioner considers inappropriate. The Act required the question whether the record is exempt. It is not. Seeking to establish whether a department conducted a proper Section 9 public interest analysis before withholding records about institutional conduct affecting thousands of people is not an abuse of process. It is the purpose stated in Section 3(1)(a), which is to ensure citizens have the information required to participate meaningfully in the democratic process.

The vocabulary of the final response reveals the source of the error. Quasi-judicial process. Not arguing before the same judge. An appeal not availed of. Those are litigation concepts, and they assume a dispute heard once, decided and closed unless appealed upward. Part II of ATIPPA, 2015 is not built that way. Section 8(1) does not create a case; it creates a standing right held continuously by every citizen, independent of anything they have previously filed or declined to file. A citizen can request records today, complain tomorrow, lose that complaint next month, and still exercise the same right of access the following week. There is no exhaustion doctrine in Part II because the legislature never put one there.

If that reasoning were allowed to stand the Act would acquire, by administrative interpretation rather than by legislation, an invisible boundary that no one voted for and no one can locate. Nothing says how long the bar lasts. Nothing says how closely a later request must relate to an earlier complaint to be caught by it. Nothing says what a citizen must do to restore full access rights after an unfavourable outcome. Those questions have no answers because the mechanism does not exist in the statute.

The Duty to Assist Applies, and Cannot Be Enforced

Section 13(1) requires the head of a public body to make every reasonable effort to assist an applicant in making a request, and to respond without delay in an open, accurate and complete manner. That duty applied to the handling of [redacted] as it applies to every request.

[redacted]

[redacted] Section 42(8)(a) provides that a complaint shall not be filed with respect to a request that is disregarded under Section 21. That provision is drafted to prevent an applicant from using the complaint process to attack the disregard itself, which is understandable. Its effect, however, is wider. It forecloses any complaint about the request, including a complaint that the public body failed in its duty to assist during the period before the disregard was approved.

So the duty in Section 13 applied throughout, and the only forum in which a breach of it could be raised is the Supreme Court Trial Division. For an applicant in my position that is not a remedy. A statutory duty that cannot be raised in any forum an ordinary applicant can reach is not, in practical terms, a duty at all.

[redacted]

But the mechanism by which this Office does examine a public body's conduct toward an applicant is a complaint under Section 42, followed by an investigation under Section 44. That is how the duty to assist is assessed in every other file. It is how it was assessed in [redacted] itself, where this Office examined the adequacy of the Department's search, asked the Department to conduct a further search, and set out its findings at paragraphs 8 to 13.

The reason that mechanism was unavailable to me here is Section 42(8)(a). The reason Section 42(8)(a) applied is that the request had been disregarded, with the approval of this Office.

The effect, which I do not suggest anyone intended, is a closed loop. The applicant is told that the public body's conduct is not something the Office can explain. The route by which the Office could have examined that conduct was closed by the approval of the decision that closed it. Nothing in the Act requires anyone to notice that this has occurred, and nothing permits the applicant to do anything about it. Subsection 42(8.1), proposed under Amendment 3D, would reopen that route without disturbing the disregard itself.

Section 21(6) of the Act sets out what a notice of disregard must contain: that the request is refused and the reasons for the refusal, that the Commissioner approved the decision, and that the applicant may appeal to the Trial Division under subsection 52(1). The Office's own guidance restates this, noting that the contents of the notice are set out in Section 21(6) and include information about the right of appeal to the Trial Division. A Section 42 complaint route appears in neither. It appears in the Form 4E, first and most prominently, and the Act forbids it.

[redacted]

How the Same Decision Is Made in Other Provinces

The disregard process in this province is decided on the papers of one party. The public body applies. The commissioner decides. The applicant is not told an application has been made, is not given a copy of it, makes no submissions, and learns of the outcome only if and when the public body chooses to send a notice.

That is not the only way the same decision can be made, and two provinces demonstrate it.

British Columbia. A public body applies to the commissioner under section 43 of that province's Act for authorization to disregard requests. The person who made the requests is a named party to the proceeding and is referred to as the respondent. Both sides file written submissions and evidence; in one 2025 matter the public body and the applicant each filed ten-page supplemental submissions. Respondents request permission to file further reply and receive it. In another 2025 matter the respondent objected that they had not been given an opportunity to review and respond to an affidavit, a complaint that is only intelligible in a process where responding is a right. The burden of proof rests on the public body. Decisions issue as numbered, published orders with reasons. And the relief is tailored rather than binary: in a 2026 order the adjudicator authorised the public body to disregard part of a request and ordered it to respond to the remainder, and the British Columbia Supreme Court has said it is more appropriate to authorise disregarding future requests in specified circumstances, such as requiring the public body to deal with one request at a time.

That Office has also stated the governing principle. Section 43 is a remedial tool used to curb abuse of the right of access; it is not punitive in nature; and applications require careful consideration because granting the relief curtails or eliminates rights of access granted by the Legislature.

Ontario. The structure is different and the outcome for the applicant is similar. An institution may itself decide that a request is frivolous or vexatious and issue a decision letter saying so. The requester may then appeal that determination to the Information and Privacy Commissioner. On that appeal the institution is required to present evidence that the request is frivolous or vexatious, and the Commissioner determines whether the institution's decision is reasonable. The appeal proceeds through mediation and, if unresolved, adjudication, where an adjudicator receives representations from the parties and issues a binding order. That Office's published guidance tells requesters directly that they should be prepared to respond to claims made about their conduct and to explain how their request is not frivolous or vexatious.

Newfoundland and Labrador. The applicant is told nothing before the decision and has no route to challenge it afterwards except the Supreme Court. This Office's own published guidance illustrates how far outside the process the applicant sits. It states that in its decision-making process the Office reserves the right to contact the applicant and discuss the request if necessary, and that under such circumstances it may need to obtain the name and contact information of the applicant. The applicant is not merely unheard. The decision-maker may not know who they are.

I do not suggest that this province should adopt another jurisdiction's model wholesale. British Columbia's process takes months, and there is a legitimate interest in a disregard being decided quickly. But the choice is not between speed and fairness. Ontario's institutions decide quickly and the applicant is heard afterwards. British Columbia's applicants are heard first and the decision takes longer. Newfoundland and Labrador has chosen speed and has provided neither. A citizen who makes the same request in Vancouver is a party to the proceeding that extinguishes it. A citizen who makes it in Toronto can compel the institution to prove its case, free of charge, before an adjudicator. A citizen who makes it here is told after the fact, in a letter, and directed to the Supreme Court.

What That Difference Means in Plain Terms

I want to put this plainly, because the comparison is not an abstract one for me.

Had I made the same request in Vancouver, I would have been a party to the proceeding that took my right to it away. I would have received the public body's application. I would have been able to say why it was wrong. Someone would have had to read what I wrote before deciding. Had I made it in Toronto, I could have required the institution to prove its case to an adjudicator, and that Office's published guidance would have told me directly to be ready to answer what was said about my conduct.

I made it in Newfoundland and Labrador. I was told nothing until it was over. I was never asked for my side. The only place I can give it is a court I cannot afford.

[redacted]

[redacted]

A citizen's right to know what is being said about them, and to answer it before it is acted upon, should not depend on which province they happen to live in or on the size of the office deciding. If the resources are not there for a full process, that is an argument for a smaller process. It is not an argument for no process at all.

The Access Right Is Purpose Blind and Not Contingent on Appealing

[redacted]

Section 8(1) does not require citizens to state a reason for wanting records. It does not require citizens to have exhausted appeal remedies first. It does not condition the access right on having appealed an OIPC report. I could have wanted the Section 9 analysis to give to a journalist. I could have wanted it for this submission. I could have wanted it simply to learn whether an analysis was conducted at all. I could have wanted it for no reason whatsoever. Under Section 8(1) I am entitled to it in all of those cases unless a specific exemption applies. No exemption was ever identified for the record as sought in [redacted]

Furthermore, the Commissioner states that I chose not to appeal. [redacted] a Trial Division appeal costing thousands of dollars and taking months or years is not a choice in any meaningful sense. It is a financial barrier. Under that reasoning, citizens who cannot afford court lose not only their appeal remedy but their ongoing access rights as well. The citizens most in need of the OIPC as an accessible alternative to court are the citizens most harmed by a framework that treats not appealing as forfeiture.

Three statutory rights exist independently in ATIPPA, 2015: the right to access records under Section 8(1), the right to file a complaint under Section 42, and the right to appeal under Section 52. Exercising one should not affect the others. Not exercising one should not forfeit the others. The position taken in my file collapses all three into a single pathway in which filing a complaint and not appealing leaves a citizen with fewer access rights than a citizen who never engaged the system at all.

Section 21 as a Pre-Emptive Shield Against Citizen Oversight

[redacted]

[redacted] Applied as it was here, it operates not as a filter for abusive requests but against legitimate ones. It blocked access to a Government Services administrative record that any other citizen in this province could request and receive today. The record as sought in GS-077-2026 is not exempt under any provision of Division 2 of Part II. No exemption has ever been identified for it. It is disclosable on its merits to the general public and blocked only to me, because I complained about the request that generated it.

ATIPPA, 2015 is applicant blind. Whether a record is disclosable should depend on what the record contains, not on who is asking. Section 21 as applied here produced a personal prohibition on a public record, which is the opposite of what the Act was designed to do.

The OIPC Cannot Use Its Own Reports To Shield Evidence From Public Scrutiny

The effect of the disregard, whatever was intended by it, is that the Section 9 analysis cannot now be examined by anyone outside Government Services. It is worth setting out what that means on each of the possible states of affairs. If the analysis was superficial, the disregard shields that from scrutiny. If no documented analysis was made at the time, the disregard shields that absence from scrutiny. If the analysis was thorough and well reasoned, the disregard was unnecessary. On every version of the facts, the only party placed in a better position by blocking access to a department's own Section 9 analysis is the department that conducted it.

[redacted]

Section 3(1)(b) of ATIPPA, 2015 states that the purpose of the Act is to facilitate democracy through increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable. The Information and Privacy Commissioner is an officer of the House of Assembly. Section 3(1)(b) therefore applies to the Commissioner as much as to any public body she oversees. Commissioner Hatfield stated publicly in her May 29 2026 interview with *The Independent* that transparency should be the norm, and that "If you want to not give information to the public, you better have a darn good reason." Those two statements point in the same direction. (Kerry Hatfield, interviewed by Justin Brake, "Access to Information Under Attack," berrygrounds podcast, *The Independent*, May 29 2026.)

[redacted]

The consequence is this. The report is the conclusion. The Section 9 analysis is the evidence behind the conclusion. The conclusion was used to block access to its own evidence. Citizens, including this committee, cannot independently verify the conclusion because the Office used its own report to prevent access to the underlying record.

The Office's own published guidance, *Applying to the Commissioner for Approval to Disregard an Access to Information Request* (OIPC, June 2015, revised August 31 2017), defines the ground precisely. It states that a request is repetitive when a request for the same records or information is submitted more than once, that "systematic" involves a pattern of conduct that is regular or deliberate, and that access legislation was not intended to allow an applicant to resubmit the same or similar access requests to a public body simply because of dissatisfaction with a response.

[redacted]

If the contrary position is correct, its consequence should be stated plainly: an applicant refused under Section 41(c) who then narrows a request so that Section 41(c) cannot apply is thereby acting repetitively and systematically. On that view no applicant in this province can safely revise a refused request, and the conduct being penalised is precisely the conduct that the Commissioner's published guidance, her own public advice, and this Office's Director of Research and Quality Assurance each recommend.

[redacted]

[redacted] The point is that nothing in ATIPPA, 2015 allows an applicant to find out. Section 21(6) requires the public body's notice to state the reasons for the refusal, but Section 21(2) requires only that the Commissioner decide to approve or disapprove within three business days. The Act requires no reasons from the Commissioner for an approval, no disclosure of what the public body submitted in support of it, and no notice to the applicant that an application has been made at all. A citizen in my position cannot distinguish a decision made on a complete record from one made on an incomplete record. Neither can this Committee. Amendment 3D is directed at precisely that.

The same guidance sets the standard the Office applies to itself when deciding these applications. It records that Commissioners in Canadian jurisdictions with comparable provisions are reluctant to support a decision to disregard unless the evidence is clear and convincing, and it states twice that because approving a disregard essentially eliminates an applicant's right of access, any doubt will be resolved by the Commissioner in favour of the applicant [redacted]

No public body could use its own internal reports to block access to the records those reports were based on. Yet that is the practical outcome Section 21 produced in my file. The 2026 statutory review is asked to consider whether that outcome is consistent with Section 3(1)(b) and, if not, what legislative amendment would prevent it recurring.

What This Means in Plain Terms

Setting the statutory argument aside, this is what the Commissioner's position asks of me in practice.

During the complaint I asked to see the Section 9 analysis. I was refused. After the complaint I filed a direct access request for the same document. It was disregarded. The Commissioner told me I should have appealed the report instead. Then she told me I should have appealed the disregard as well.

Both of those are Trial Division applications. Both cost thousands of dollars. Both take months.

And I do not know whether the record I am being sent to court for exists. This Office has confirmed that the Department's submissions to it during the complaint contained an analysis of Section 9, but that is a different record, prepared for the complaint, and it is not what [redacted] sought. Whether anything was written down at the time the Department applied the exemptions has never been established, and the disregard is what prevents it from being established. If nothing was written down, I am being directed to court to ask a judge to rule on my right of access to a record that may not exist. Confirming that a record does not exist costs nothing under this Act. A public body writes one sentence in a response letter. Instead the framework sends [redacted] to the Supreme Court, at a cost of thousands of dollars and months of court time, to obtain that same sentence. That is not proportionate, and it is not what the Trial Division is for.

[redacted]

That is not a procedural technicality. That is the right of access operating as a luxury good. The Act says it should operate as a democracy.

The Hidden Penalty — Why ATIPPA Forms Would Need a Warning Label

If the current interpretation of Section 21 is allowed to stand, the OIPC complaint form ought in fairness to carry the following notice.

> **WARNING. By exercising your statutory right to file a complaint regarding redactions or delays under ATIPPA 2015 you may permanently forfeit your right to request internal administrative compliance or decision-making records created during the processing of your original access request. Filing a complaint may leave you with fewer access rights than an individual who never engaged the oversight process at all.**

No legislature would enact a statute containing that disclaimer because it contradicts the purpose stated in Section 3. Yet that is the operational reality Section 21 created in my file. I filed a complaint. A report was issued. That report became the basis for blocking my access to the underlying records it relied upon. I am in a worse position because I complained than I would have been had I never complained.

That is a chilling effect in the ordinary administrative law sense. A rule that quietly penalises someone for exercising a public right discourages citizens from using it. If applicants understood before filing that doing so might cost them access to the underlying records, many would not file, and the mechanism that is supposed to hold public bodies accountable would be undermined by the undisclosed cost of using it. The fact that no legislature would put that warning on a government form is itself the argument that the interpretation producing it should not stand.

[redacted]

Proposed Amendment 3 — Procedural Fairness in OIPC Section 9 Reviews

Insertion target: Add as Section 44.1 under Part III (Reviews).

44.1 Disclosure of Section 9 Analysis in Complaint Reviews. (1) Where a public body submits a written evaluation or rationale regarding Section 9 to the commissioner during a review under Part III, the commissioner shall provide a summary of that evaluation to the complainant before issuing a final report under Section 47. (2) The summary shall set out the specific public interest factors evaluated by the public body and its reasoning for concluding the threshold was not met. (3) The complainant shall be granted a reasonable opportunity to submit written representations in response to the summary before any finding regarding the Section 9 override is finalized.

The objection to this amendment is that Sections 96 and 102 prohibit disclosure of investigation materials. [redacted]

What followed under that heading was a list of which exceptions the Department had claimed and its conclusion that the threshold was not met. It identified no factor weighed, no evidence considered, and no reasoning. It told me the outcome of the Department's analysis and nothing about how that outcome was reached. The defect this amendment addresses is therefore not that a summary is prohibited. It is that nothing in the Act requires one, and nothing specifies what a summary must contain in order to give a complainant a meaningful opportunity to respond.

Proposed Amendment 3A — Access to Public Body Decision-Making Records

Insertion target: Add as Section 8.1 under Part II (Access to Records).

8.1 Access to Section 9 Decision-Making Records. (1) A written evaluation, analysis, note or worksheet created by a public body pursuant to Section 9 constitutes an administrative record of the public body and is subject to Part II. (2) Where no written record of a Section 9 analysis was created during the initial processing of an access request, the public body shall issue a formal written response confirming that no such record exists.

Proposed Amendment 3B — Mandatory Initial Disclosure of Section 9 Analysis

Insertion target: Amend Section 17 (Response of Public Body).

17(1.1) Mandatory Disclosure of Section 9 Analysis. Where a public body applies a discretionary exception under Division 2 of Part II and conducts a public interest evaluation under Section 9, the written record of that analysis, detailing the specific factors weighed for and against disclosure, shall be provided to the applicant with the response issued under Section 17.

This amendment prevents the entire sequence documented in Gap 3 from arising. If the analysis accompanies the initial response, the applicant sees the reasoning before deciding whether to complain, the OIPC never has to assess an analysis the complainant has not seen, and no secondary access request is necessary. My experience shows what happens without it. I received a conclusion. I never received the analysis. I filed a complaint. The OIPC accepted the conclusion without disclosing the analysis to me. I filed a direct ATIPP request for the analysis. It was disregarded. The written record of a public body fulfilling a statutory obligation should not require months of complaints and access requests to obtain.

Proposed Amendment 3C — Limits on the Approval of Disregard Applications

Insertion target: Amend Section 21 (Disregard of Request).

21(1.1) Evidentiary Threshold for Repetition. The commissioner shall not approve an application under paragraph (1)(c) on the ground that a request is unduly repetitive or systematic unless the public body establishes with objective evidence that the specific records sought have previously been disclosed to the applicant.

21(1.2) Exclusion of Oversight Participation. For the purpose of paragraph (1)(c), an applicant's exercise of the right to file a complaint or to participate in a review under Part II or Part III, and an applicant's election not to commence an appeal under Section 52, shall not be treated as an adverse factor, as evidence of an improper pattern of conduct, or as grounds for finding a subsequent request repetitive, systematic or an abuse of the right of access.

21(1.3) Preservation of the Applicant-Blind Principle. An application under paragraph (1)(c) shall not be approved where the effect of the disregard would be to withhold from the applicant a record that remains disclosable to any other member of the public under Part II. Section 21 shall not operate to create a personal prohibition on a public record directed at a specific applicant on the basis of request history or prior participation in oversight proceedings.

21(1.4) Revised Requests. A request that narrows or revises an earlier request in response to the reasons given for refusing that earlier request shall not, by reason of that narrowing or revision alone, be considered repetitive or systematic under paragraph (1)(c).

21(1.5) Notice of the Application and Opportunity to Respond. (a) A public body that applies to the commissioner under subsection (1) shall, on the same day, give the applicant written notice that the application has been made and provide the applicant with a copy of the application and of any material submitted in support of it. (b) The applicant may make written submissions to the commissioner within 5 business days of receiving that notice. (c) The commissioner shall not approve an application under subsection (1) before the period in paragraph (b) has expired or the applicant has responded, whichever occurs first. (d) The burden of establishing that a ground in subsection (1) is made out rests on the public body.

[redacted]

Subsection (1.1) requires objective evidence. The Office's own guidance defines a repetitive request as one for the same records submitted more than once. Nothing in my file meets that description, and no evidence of prior disclosure was ever produced, because the record has never been disclosed to me.

Subsection (1.2) is the most consequential of those four. I filed a complaint about redactions in [redacted] That complaint produced [redacted] When I then filed a direct access request for the underlying Section 9 analysis, the existence of that report became the reason my request was unduly repetitive, and my decision not to appeal became a further reason. My use of the oversight process was turned into the basis for denying my access right. Engaging with the OIPC should never leave a citizen with fewer rights under ATIPPA, 2015 than a citizen who never engaged at all.

Subsection (1.3) restores the principle that access rights attach to records rather than to requestors. The Section 9 analysis has never been claimed exempt under any provision of Sections 27 through 41. Any other person could request it today and the ground used against me could not apply to them, because that ground rests on my own request history. The record is disclosable to the entire public except the one citizen who filed the original request and then used the complaint process this Act provides.

Subsection (1.4) addresses the sequence set out in Gap 3. [redacted] was refused under Section 41(c). I narrowed the request so that Section 41(c) could not apply and filed it the following day. Narrowing a refused request is what the Commissioner's published guidance, her own public advice, and this Office's Director of Research and Quality Assurance each recommend. Without subsection (1.4), an applicant who follows that advice can have the narrowing itself treated as evidence of a repetitive pattern, and no applicant in this province can safely revise a refused request.

Subsection (1.5) is the provision I would ask the Committee to consider most carefully, because it changes the character of the process rather than its outcome in any particular case. As set out above, a public body seeking to extinguish a request in this province is not required to tell the applicant it is doing so, and the applicant has no opportunity to say anything before the right of access is removed. In British Columbia the applicant is a party to that proceeding. In Ontario the applicant can require the institution to prove its case before an adjudicator. Here the applicant is absent from a proceeding about their own conduct.

The subsection is drafted to preserve the speed the current process is designed for. It does not extend the five business day period for applying, and it does not require the public body to wait if the applicant responds sooner. It adds, at most, five business days to a process the Act intends to take eight, and only where the applicant chooses to use them. Paragraph (d) states what this Office's own guidance already assumes but the Act does not say: that the public body must establish the ground relied upon. Subsection (1.5) addresses what happens before a disregard is approved. What happens afterwards, and in particular the absence of any review short of the Trial Division, is the subject of a separate amendment in a later submission in this series; the two are intended to be read together.

Proposed Amendment 3D — Transparency, Timeliness and Accuracy of Disregard Notices

Insertion target: Amend Section 21 (Disregard of Request).

21(4.1) Notice to the Applicant. Where the commissioner approves an application to disregard a request, the public body shall notify the applicant in writing not later than 5 business days after the approval. The notice shall state the date on which the application was made to the commissioner, the date on which approval was given, and the specific grounds relied upon.

21(4.2) Reasons of the Commissioner. The commissioner shall provide the applicant with written reasons for the approval of a disregard application, sufficient to permit the applicant to understand why the request met the threshold in subsection (1).

21(4.3) Accuracy of Notice of Rights. A notice of disregard shall accurately state the review and appeal rights available to the applicant and shall not state that a complaint may be filed under Section 42 where Section 42(8)(a) prohibits it.

42(8.1) Preservation of Duty to Assist Complaints. Paragraph (8)(a) does not prevent an applicant from filing a complaint respecting the compliance of the head of a public body with Section 13 in relation to a request that has been disregarded under Section 21.

Each requirement is supported by the facts in this section. The Act currently sets no deadline for notifying the applicant, with the result that I received a formal Section 15 advisory response promising a July 31 final response while a disregard application had already been made, the coordinator communicating with me being, in his own department's words, unaware of the circumstances. The Commissioner declines as a matter of policy to explain disregard decisions beyond the public body's notice, and that notice supplied a single sentence. And the notice I received directed me to a complaint route that Section 42(8)(a) forecloses, while the text of Section 42(8)(a) was reproduced in the same letter.

Subsection 42(8.1) addresses the point set out above under the duty to assist. Section 42(8)(a) properly prevents an applicant from using the complaint process to attack a disregard the commissioner has approved. It should not also extinguish the applicant's ability to raise how the public body treated them before that approval. In my file a formal statutory response was issued that the Department itself withdrew as inaccurate, and there is no forum short of the Supreme Court in which that can be raised. This subsection separates the two questions, leaving the disregard unchallengeable by complaint while preserving the duty that Section 13 imposes on every public body in every file.

Gap 4 — Section 30 Self-Certification Without Independent Verification

[redacted]

The report did not address the severability question. It did not confirm that Section 8(2) was applied. It confirmed only that the Department provided information sufficient to conclude on a balance of probabilities that the privilege was properly claimed. That is supervised self-assessment not independent verification.

Why This Is a Structural Gap

Commissioner Michael Harvey publicly identified this as a serious gap in his September 2023 statement, issued in the days following that decision. The legislature has not acted to address it. Under the current Act any public body that wants to withhold any document simply instructs its solicitor to confirm the three part legal test is met. The OIPC records that confirmation. The document stays withheld. No independent verification ever occurs. That is supervised self-assessment rather than independent oversight.

[redacted]The current Act provides no check on whether the privilege claim is legitimate or whether non-privileged content within claimed documents has been severed.

Commissioner Hatfield has publicly identified this same problem. In her May 29 2026 interview she said she would like the Act amended to give her Office express authority to review records withheld under a claim of solicitor-client privilege, and her reason was that public bodies are not always right — that there have been court cases where the claim was made and the records turned out not to be privileged. She was careful to say the exemption itself should remain. So am I. The amendment below asks for nothing the Commissioner has not already asked for on her own behalf. Where the applicant and the oversight body independently identify the same defect, the case for legislative attention is stronger, not weaker.

Proposed Amendment 4 — Independent Verification of Solicitor-Client Claims and Mandatory Redaction Index

Insertion target: Amend Section 44 (Conduct of Review) and Section 17 (Response of Public Body). Section 44(6) Restoring Independent Review of Privileged Records. Notwithstanding any claim of solicitor-client privilege under Section 30 the commissioner may compel the production of and review any record claimed under Section 30 for the limited purpose of independently verifying whether the privilege has been properly claimed and whether non-privileged content can be severed under Section 8(2).

Section 44(6.1) Safeguards on Production. A record produced to the commissioner under subsection (6) shall be reviewed in camera; shall not be copied, retained after the review is concluded, or disclosed to the applicant or to any other person; shall not be described in a report except to the extent necessary to state whether the claim was properly made and whether severance was required under Section 8(2); and production under this section does not constitute a waiver of solicitor-client privilege for any purpose.

Subsection (6.1) is included deliberately. In *Newfoundland and Labrador (Information and Privacy Commissioner) v Newfoundland and Labrador (Justice and Public Safety)*, 2023 NLCA, the Court of Appeal gave two reasons for holding that the Commissioner cannot compel production of privileged records. The first was that the language of the Act was not sufficiently explicit. The second was that the Act contained insufficient safeguards to prevent disclosure of privileged material. Amendment 4 addresses the first. Subsection (6.1) addresses the second. An amendment that supplied explicit language without safeguards would answer only half of the Court's reasoning, and the Commissioner has been clear in public that she seeks the power to verify a privilege claim, not to release privileged records.

Section 17(1.2) Mandatory Redaction Index for Section 30 Claims. Where a public body withholds a record in its entirety under Section 30 it shall provide the applicant and the commissioner with a detailed redaction index. The index must confirm that the public body has actively reviewed the record for severable non-privileged content including factual summaries operational data or decision notes and certify that no non-privileged information can be disclosed under Section 8(2).

The index must verify on a record-by-record basis that the public body has actively reviewed each page for severable factual summaries, data or operational findings, and that no non-privileged content exists within the withheld record that could be disclosed under Section 8(2). Without such an index the OIPC has no mechanism to assess whether severability was genuinely applied or simply assumed. The redaction index requirement provides mandatory accountability for the severability obligation without requiring the Commissioner to review the privileged content itself.

Gap 5 — The OIPC Is Not Required to Evaluate Disclosed Records as Corroborative Evidence of Public Interest

[redacted]

[redacted] No one outside the Department has verified that confirmation, or verified that severance under Section 8(2) was applied to any factual or operational content within the withheld portions. The record that raises the question was released. The material attached to it was not, and cannot be checked by anyone.

[redacted]

Why This Is a Structural Gap

When a complainant receives partial disclosure and raises Section 9 public interest factors, the OIPC operates under no statutory obligation to assess whether the existing disclosures support or corroborate those arguments before concluding a burden has not been met. This permits the

OIPC to evaluate an applicant's public interest arguments in a vacuum completely divorced from the evidentiary context of the file.

The OIPC is an investigative body not a passive court. It has total access to both the disclosed and withheld records. A self-represented complainant without formal legal training cannot always be expected to isolate every piece of supporting evidence within a massive complex records package or understand its full technical significance in relation to a Section 9 threshold. Because the OIPC holds the entire file it is uniquely positioned to assess whether the disclosed records corroborate the applicant's public interest assertions. The Act must mandate that it do so.

How Ontario Handles the Same Problem

Ontario has confronted precisely this difficulty and resolved it the other way. The public interest override in section 23 of Ontario's *Freedom of Information and Protection of Privacy Act* is, like Section 9 of ATIPPA, 2015, silent on who bears the onus. The Office of the Information and Privacy Commissioner of Ontario has held that the onus cannot rest entirely on the appellant, because the appellant has not had the benefit of reviewing the requested records before making submissions, and that to hold otherwise would impose an onus an appellant could seldom if ever meet. The consequence is set out in the Ontario IPC's published Interpretation Bulletin on the public interest override, and rests on its Orders P-244 and PO-4277: that Office will itself look at the records to decide whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.

That is the same reasoning our own Trial Division applied in *Mastropietro*, carried through to its practical conclusion. Newfoundland and Labrador adopted the premise — the burden must be relaxed because the applicant has not seen the records — without adopting the remedy that follows from it. Ontario's oversight body examines the record itself rather than treating the applicant's inability to see it as the applicant's problem alone. Ours issued a one sentence conclusion that the burden was not met.

Two differences should be stated plainly so the comparison is not overstated. Ontario's override applies only to a listed set of exemptions rather than to discretionary exceptions generally, and its threshold is higher than ours: a compelling public interest that clearly outweighs the purpose of the exemption. In scope, Section 9 of ATIPPA, 2015 is the stronger provision. The difference is not in the words of the statute but in what the oversight body is expected to do with them. Ontario asks its Commissioner to look. Ours is not required to.

Proposed Amendment 5 — Corroborative Evidentiary Evaluation under Section 9

Insertion target: Amend Section 44 (Conduct of Review). Section 44(4.1) Duty to Evaluate Disclosed Records as Corroborative Evidence. In evaluating whether the public interest in disclosure outweighs an exemption under Section 9 the commissioner shall conduct a holistic evidentiary review of all records disclosed in the file. Where disclosed records provide prima facie evidence or corroboration of systemic regulatory financial or statutory non-compliance the commissioner shall require the public body to provide elevated written justification for maintaining the exemption and shall address that corroborative evidence explicitly in the final report.

Furthermore where disclosed records contain clear evidence that withheld records directly address a documented systemic regulatory or statutory failure the OIPC shall be required to provide specific written reasons justifying why the public interest override does not apply in light of that evidence. This amendment ensures that the relaxed burden established in Mastropietro operates as a meaningful practical protection for self-represented applicants rather than a hollow legal concept.

Why These Amendments Matter

The five structural gaps described above did not prevent me from continuing to pursue accountability. I have the time and determination to keep documenting institutional conduct. Most citizens do not. The people most affected by gaps in ATIPPA, 2015 are precisely the people least able to navigate around them. This submission proposes nine legislative amendments in total. Five of those amendments numbered 3 through 3D address Gap 3 specifically because the experience of trying to access the Section 9 analysis through the complaint process and then through a direct ATIPP request revealed multiple overlapping structural problems all flowing from the same core issue. A citizen who files a complaint should not end up with fewer access rights than one who never complains. An OIPC report should not become a shield against future access to the underlying records it accepted. A disregard should not be usable to restrict access to records that are disclosable to every other citizen. Those are not technical legal arguments. They are the documented consequences of the current framework experienced by a citizen trying to use the Act the way the legislature intended.

[redacted]

The proposed amendments do not require the OIPC to find for complainants. They require the OIPC and public bodies to engage with specific arguments, explain their reasoning on specific factual challenges, disclose their Section 9 analysis, consider whether disclosed records corroborate public interest arguments, and submit privilege claims to genuine independent review. That is procedural fairness. That is what ATIPPA, 2015 is supposed to provide. The current Act does not require it in these specific situations. These amendments would.

Analytical Questions for the Committee's Consideration

The following questions are offered to assist the Committee in considering the structural implications of the issues documented in this submission. They are presented strictly as forward-looking policy considerations and are not requests for findings on any past file.

Question 1: Prior Complaint as Disregard Grounds. When a citizen files a complaint under Part III and later seeks under Section 8(1) the public body's own never-disclosed administrative records created before the complaint was filed should the existence of that prior complaint or report itself be treated as grounds for a Section 21 disregard of the subsequent access request?

Question 2: Inferred Motive under Section 21. Does Section 21 permit the Commissioner to infer an applicant's underlying purpose such as re-litigation or conducting one's own investigation and then use that inferred purpose as the basis for approving a disregard of a request for a specific previously unreleased record?

Question 3: Personal Prohibitions on Public Records. If a record remains disclosable on its merits to any other member of the public under Part II is it consistent with the purpose of the Act under Section 3 for Section 21 to create a personal bar that applies only to the individual who previously exercised the right to complain?

Question 4: Net Loss of Access Rights. When an OIPC report relies on a public body's Section 9 analysis that was never disclosed to the complainant and a subsequent access request for that analysis is disregarded on the basis of that report does this framework produce a net loss of access rights for citizens who engage the oversight process compared to citizens who never complain at all?

Question 5: Parallel Rights vs Extinction. Should the right of access under Section 8(1) and the right to file a complaint under Section 42 operate as parallel independent statutory rights or should the exercise of one be permitted to diminish the other?

Question 6: Substantive Exemptions vs Disregard. Where no substantive exemption under Division 2 of Part II has been identified for a record is a Section 21 disregard an appropriate administrative tool to prevent disclosure of that record to the original applicant?

Question 7: Accountability of Oversight Officers. Given that Section 3(1)(b) requires transparency so that officers of public bodies remain accountable and the Commissioner is an officer of the House of Assembly under Section 2(s) how should Section 21 be applied when its effect is to shield from scrutiny the underlying evidentiary basis of an OIPC report?

Conclusion

I respectfully ask the reviewer to consider the five structural gaps identified in this submission and the nine proposed amendments addressing them. The four public interest arguments and the report's one sentence response to all four are reproduced side by side in this submission so the reviewer can assess directly whether arguments of that specificity and documentary weight deserve individual engagement under the relaxed Mastropietro burden. Gap 3 in particular produced five amendments numbered 3 through 3D because the attempt to access the underlying Section 9 analysis after the complaint closed revealed that the complaint process and the access right can operate against each other in ways that penalise citizens for engaging with oversight. [redacted]

[redacted]

[redacted]

Respectfully submitted,

David Hanrahan

The remainder of this submission is removed due to the nature of content

[redacted]