

**BBBOnLine® Privacy Program**  
**Dispute Resolution Process Procedures**  
Privacy Policy Review Service and Privacy Review Appeals Board

**General Procedures**  
**Effective February 11, 1999**

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## **Part 1 OVERVIEW**

### **1.1 GENERAL**

The BBBOnLine Online Privacy Program Dispute Resolution Process provides for review of an eligible complaint by the Privacy Policy Review Service (PPRS) of BBBOnLine, Inc., (a subsidiary of the Council of Better Business Bureaus, Inc.). In addition, where the complaint is against a company or individual that is a participant in the BBBOnLine Privacy Program, there may be an opportunity for a PPRS decision to be appealed to the Privacy Review Appeals Board (PRAB).

### **1.2 PARTIES TO PPRS/PRAB PROCEEDINGS**

The parties to a proceeding are:

the complainant, the individual complaining about misuse of information, and  
the respondent, the company, organization or individual about whom the complainant is complaining.

A party may designate another individual as a representative during the dispute resolution process under procedures specified by BBBOnLine.

### **1.3 PARTIES' WAIVER OF SUBPOENA RIGHTS AND OF LIABILITY CLAIMS**

By participating in a PPRS or PRAB process, the parties agree that they will not subpoena the staff of the Council of Better Business Bureaus, Inc., or BBBOnLine, Inc., their Board members, committee members or volunteers, or any records of the PPRS or PRAB proceedings in any subsequent legal proceeding arising out of the matters at issue in the process in which they are participating. They also agree that the Council of Better Business Bureaus, Inc., BBBOnLine, Inc. their staffs, Board members, committee members or volunteers shall not be liable for any act or omission in connection with the online privacy dispute resolution process.

### **1.4 CONFIDENTIALITY OF PPRS AND PRAB FILES**

PPRS and PRAB shall maintain a record of their proceedings, but a verbatim record is not required. All deliberations, meetings, proceedings and writings of a PPRS reviewer or PRAB panel other than their decisions shall be treated as confidential by the PPRS and PRAB. A PPRS decision, and a PRAB decision in those cases referred to a PRAB panel, are the only permanent records required to be kept as to the basis of a complaint, the issues defined, the facts and information presented, and the conclusions reached by PPRS, or PRAB if it has been involved in the process.

Case materials, other than confidential materials, that are not required to be kept as part of the case record shall be kept for a period of three years. Confidential materials submitted to PPRS shall be returned when PPRS issues its decision in the matter or closes a case without a decision. If submitted to PRAB, they shall be returned or destroyed when the case is closed.

### **1.5 PARTIES' TREATMENT OF INFORMATION RECEIVED DURING THE PROCESS**

By participating in a PPRS or PRAB process, the parties agree that during the course of the process they will treat any information provided to them by the PPRS staff or PRAB panel as information provided exclusively for the purpose of furthering the review and that they will not provide the material to anyone except persons directly

involved in the handling of the complaint. If a party violates this agreement, PPRS, or PRAB, may refuse to proceed with the case. The purpose of this right of refusal is to maintain a professional, unbiased atmosphere in which PPRS or PRAB can effect a timely and lasting resolution to a case in the spirit of furthering voluntary self-regulation of online privacy and the voluntary cooperation of the parties involved. If the party violating the agreement is a respondent, PPRS may refer the matter to the appropriate government agency if appropriate and, if the party is a seal participant, may withdraw or suspend the seal if appropriate.

## **1.6 REFERRALS TO GOVERNMENT AGENCIES AND SEAL COMPLIANCE REVIEW BECAUSE OF FAILURE TO PARTICIPATE**

When PPRS's preliminary review of a complaint indicates it is an eligible claim submitted by an eligible complainant and the individual or organization complained about indicates directly or indirectly during the PPRS review that it is not willing to participate in the process or a respondent fails to comply or appeal after a PPRS decision requiring corrective action, PPRS, shall refer the matter to the appropriate government agency. If an organization or individual complained about indicates directly or indirectly in the course of a PRAB appeal that it is not willing to participate in the appeal or fails to comply after a PRAB decision requiring corrective action, the PRAB Chair may refer the matter to the appropriate government agency. Reports of such referrals shall be included in the PPRS Reports and may be included in other *BBBOnLine* publications. If the referred organization or individual is a *BBBOnLine* Privacy Program participant, PPRS shall withdraw or suspend the seal. See also, sections 3.4.6, 3.6.3, 4.9.2.

## **Part 2        ELIGIBLE COMPLAINTS**

### **2.1        SUMMARY**

To have a complaint eligible for resolution through the dispute resolution process, the complaining individual must be personally eligible to file a complaint and must have an eligible claim.

### **2.2        PERSONAL ELIGIBILITY**

The individual's complaint must be about:

- a)     the use of information that identifies himself/herself or identifies another individual that was collected online from him/her, or  
        the use of information that identifies a child that was collected online from such child when she/he was under the age of 13, or  
        the use of information that identifies himself/herself that was collected online from another individual;  
        and
- b)     information that was collected --  
        by an organization through a website or online service displaying the *BBBOnLine* Privacy Program Seal, or  
        through any other website or online service directed at residents of the U.S., its territories or possessions that displays a statement advising users of the site that privacy safeguards will apply to the information collected from them.

The complainant must be (i) the person who provided the personal information to the organization or individual that collected it and allegedly misused it, (ii) the parent or legal guardian of the person in the case of information collected from a child under 13, or (iii) the subject of the information in the case of information related to an individual that was collected online from another individual. The complainant must have made a good faith attempt to resolve her/his complaint directly with the organization or individual about which he or she is complaining, following the procedures set out in that organization's or individual's statement of its privacy policies.

### **2.3        ELIGIBLE CLAIMS**

The complaint must allege that the organization or individual that collected the identifying information from the complainant online has:

- a) used such information in a manner inconsistent with its published online privacy policies; or
- b) in the case of a website displaying the *BBBOnLine* Privacy Program Seal, otherwise engaged in actions or practices with respect to the information collected from the individual online that are at variance with the *BBBOnLine* privacy guidelines applicable to that website.

The complaint must include information to support the complainant's allegation(s). In addition, the claim must not be ineligible for one of the reasons stated below.

### **2.4        INELIGIBLE CLAIMS**

PPRS shall not consider a claim:

- in which the complainant is only seeking some form of monetary damages;
- in which the complainant is only alleging fraud or other violations of statutory or regulatory law;

- in which the respondent is a non seal participant that is participating in another seal program that provides for an adequate dispute resolution process including the provision of written decisions within a reasonable time after the process is initiated; or
- that has been resolved under a previous court action, arbitration or other form of dispute settlement.

Unless both parties agree, PPRS shall not consider a claim:

- that is currently in litigation or the subject of any other adjudicatory process (including claims submitted for resolution through binding arbitration); or
- as to which the complainant has previously agreed to use some other form of dispute resolution.

## **2.5 AVAILABLE REMEDIES**

A complainant may seek to have the information that she or he submitted online which is the subject of the complaint used in a manner consistent with the company's published privacy policies and, if applicable, the BBBOnLine Online Privacy Program guidelines. A complainant also may seek to have that information corrected.

PPRS or PRAB may require corrective action in the form of a change in online privacy policies or practices if, based on the evidence in the case, it deems such action to be required to avoid recurrences of the problem that is the subject of the complaint.

Neither PPRS nor PRAB can direct any corrective action that would require:

- monetary damages; or
- relief that would require the respondent to violate legal requirements imposed on it.

If the otherwise appropriate corrective action in a case would require the respondent to violate legal requirements, the respondent's continued eligibility to display the seal will be reviewed.

## **2.6 INTAKE FUNCTION**

Intake is the first point of contact for those who wish to obtain information or make a complaint under the BBBOnLine Online Privacy Program Dispute Resolution Process. Upon receipt of any customer contact, the intake staff will record basic information from the individual and determine whether the contact is a general question or a potential complaint and will then handle the matter accordingly.

## **2.7 HANDLING OF GENERAL INQUIRIES**

If the contact is a question or request for information, the intake staff will promptly answer the inquiry and, if appropriate, furnish informational materials to the inquirer and/or provide information as to the availability of online information that may be responsive to the question.

## **2.8 HANDLING OF POTENTIAL COMPLAINTS**

### **2.8.1 Inquiry into status of potential respondent**

When the intake staff believes the contact is a potential complaint, its first step will be to determine whether the potential respondent is a seal participant or not and, if it is not, whether it has an acceptable dispute resolution program. If it does have such a program, the individual will be referred to that program. If it does not, the intake staff will proceed with processing of the complaint.

### **2.8.2 Inquiry into prior attempt to resolve the complaint**

After determining the status of the potential respondent, the intake staff will inquire into whether the complainant has made an attempt to resolve the complaint through contact with the organization or individual complained about. If the person submitting the complaint indicates there was, he/she will be asked to describe the contact and the results where such information was not already provided and intake will proceed to the next step. If he/she indicates there was no attempt to resolve the complaint through contact with the organization or individual, he/she will be asked to try to so resolve the complaint and, in the case of a Privacy Seal participant, will be given information as to the person(s) to be contacted. The individual will be advised that he/she can return to the intake staff if his/her attempt to resolve the complaint does not yield satisfactory results.

### **2.8.3 Verifying identity of complainant and representative**

After ascertaining that there has been a prior good faith attempt to resolve the issue with the organization or individual, the intake staff will undertake some inquiry into the identity of the person making the contact to attempt to verify to the extent possible that she/he is the person she/he is representing himself to be. If the person making the contact is doing so in a representative capacity, the staff also will undertake to verify that capacity as well as the person's identity.

### **2.8.4 Forwarding potential complaint to complaint review process**

Whenever the intake center concludes it has adequate information about a prior attempt to resolve a potential complaint, it shall promptly provide the person submitting the complaint with an acknowledgement of its receipt of the complaint and forward the complaint for PPRS complaint review.

## **Part 3 DISPUTE RESOLUTION BY THE BBONLINE PRIVACY POLICY REVIEW SERVICE (PPRS)**

### **3.1 FUNCTION OF PPRS IN DISPUTE RESOLUTION PROCESS**

PPRS shall be responsible in the dispute resolution process for determining the eligibility of a complaint and evaluating, investigating, analyzing, and making a decision on the merits of an eligible complaint.

### **3.2 INFORMATION IN PPRS PROCEEDINGS**

#### **3.2.1 Information required to sustain a complaint**

Information submitted by the complainant should include a description of the respondent's disposition of the individual's initial complaint to it and must be sufficiently complete to permit the respondent and the PPRS staff to adequately evaluate the complaint. The PPRS staff shall be the sole judge of whether the information submitted is sufficiently complete to permit the opening of a case after providing the complainant with an opportunity to submit any additional information it deems necessary.

#### **3.2.2 When information may be treated as confidential**

A respondent or complainant may submit information to PPRS with the request that such information not be made available to the other party. A party seeking such treatment shall: (i) identify in its submission which materials are confidential and which are not; and (ii) affirm that the information for which confidentiality is claimed is not publicly available. Any information submitted with a request that it be held in confidence shall be returned to the submitting party or destroyed promptly upon conclusion of the PPRS proceedings.

#### **3.2.3 Providing a nonconfidential summary of confidential information**

Where a party submits material with a request that it be treated as confidential, the other party is entitled to receive a nonconfidential summary of such material that does not reveal any confidential matter but provides sufficient information about the material to allow the other party to respond to it. PPRS staff will assist a party in providing this summary where such assistance is desired. Failure of the respondent or complainant to provide an acceptable summary for this purpose will result in the information's not being considered in evaluation of the complaint. PPRS staff shall be the sole judge of the acceptability of a summary offered by either party.

### **3.3 PPRS COMPLAINT REVIEW**

Upon receipt of a potential complaint from the Intake Center, PPRS shall promptly determine whether the complainant has an eligible complaint and take one of the following actions.

- Whenever PPRS, in its sole judgment, concludes that the privacy complaint is an eligible complaint and contains all necessary information, PPRS shall docket the complaint as a case. It shall then promptly forward the complaint to the respondent for its answer with a summary of the confidential information, if any, submitted by the complainant.
- If PPRS, in its sole judgment, concludes that additional information is needed to sustain the complaint, it shall promptly contact the person who submitted the complaint and advise/her of the need for the further information for the process to go forward. If PPRS receives the requested information on a timely basis, it shall docket the complaint as a case and promptly forward the complaint to the respondent for its answer.



with a summary of the confidential information, if any, submitted by the complainant. If PPRS does not receive the requested information within 10 business days of its request, it shall advise the person that submitted the complaint that it cannot proceed with investigation of the complaint and it shall discontinue any further action on the complaint.

- If PPRS, in its sole judgment, concludes that the complaint does not meet the PPRS eligibility guidelines for reasons other than a lack of information, it shall advise the complainant that it cannot proceed with investigation of the complaint and it shall discontinue any further action on the complaint. Where appropriate, PPRS shall provide the complainant with the name and address of any agency or group which may have jurisdiction over the complaint.

### **3.4 REPLIES AND RESPONSES TO COMPLAINT AND REQUESTS FROM PPRS**

#### **3.4.1 Respondent's answer to a complaint**

After docketing a complaint as a case, PPRS shall forward the complaint to the respondent and request an answer. The respondent has 15 business days after receipt of the complaint to submit a substantial written answer, that is, an answer that includes some facts or information to support its responses to the complaint. If PPRS considers an answer to be deficient in this respect, it shall request a further answer by a time that it shall designate.

#### **3.4.2 Complainant's reply to respondent's answer**

When the respondent submits a substantial written answer, PPRS shall promptly forward that answer to the complainant, except for any material designated as confidential (see Section 3.2.2). The complainant has 10 business days after receipt of the answer to submit a written reply to the answer. If the complainant does not submit a reply, PPRS shall proceed to decide the case following the expiration of the complainant's time to reply, subject to a request by it for additional comments or data under section 3.3.

#### **3.4.3 Respondent's response to a reply**

If the complainant submits a reply, PPRS shall promptly forward that reply to the respondent. The respondent has 10 business days after receipt of the reply, to submit a written response. On receipt of the response or expiration of the time limit for submission of a response, PPRS shall proceed to decide the case, subject to a request by it for additional comments or data under section 3.3.

#### **3.4.4 PPRS request for additional information or comments**

In the event that PPRS requests comments or information from a respondent or complainant in addition to the answer, reply and response provided for above, the party receiving the request has six business days after receipt of the request to submit a written response thereto. On receipt of any such response, PPRS shall immediately forward it to the other party, who will have six business days after receipt to submit its response to the submission.

If a party fails to respond to the PPRS request for additional information or comments or fails to respond to the other party's submission in response to such request, PPRS shall proceed with its consideration of the case giving the fact of such nonresponse such weight as PPRS deems appropriate.

#### **3.4.5 Conferences**

PPRS, in its discretion, may accept a proposal by a respondent or complainant for a conference to be held within 10 business days after PPRS's receipt of the last written submission in the matter as an addition to the written submissions provided for under the preceding paragraphs, or may request such a conference on its own. A party's

proposal or PPRS's request shall delineate the reasons for requesting such conference, a date, the identity of the participants in the conference, and the agenda. Where the conference is proposed by a party, the proposed date must have been agreed to by the other party if it wishes to participate in the conference. The conference shall be held by teleconference or other electronic means and be limited to oral discussion of the matter without any written submissions.

### **3.4.6 Failure to answer a complaint**

If a respondent fails to file a substantial written answer to the complaint within the period provided in 3.4.1 or fails to make a timely response to a PPRS request for a further answer, PPRS shall advise the respondent that its default will be noted in the next periodic report and that unless the respondent files a substantial written answer to the complaint within 15 days after receipt of this notice it will refer the matter to the appropriate government agency and, in the case of a seal participant, withdraw or suspend the seal.

If the respondent files a timely answer after this notice, the answer will be forwarded to the complainant as provided for in section 3.4.2 and the case will proceed from that point on in the manner prescribed in sections 3.4.3, 3.4.4 and 3.4.5.

If the respondent fails to file a timely answer after this notice, PPRS shall refer the file to the appropriate government agency and shall report the matter and the referral in the next periodic PPRS reports. In addition, if the respondent is a BBBOnLine privacy seal program participant, PPRS shall withdraw or suspend the seal.

### **3.4.7 Late filings**

For a submission under this section to be timely, it must be received by PPRS within the specified period for submission. The parties may agree between themselves to extend the time limits specified in this section. In such case, the agreed upon limits will be controlling upon PPRS's receipt of a copy of the parties' agreement. If a party files a reply or response or submits requested information after the specified time limits, the untimely document shall not be considered by PPRS, unless the party receives an extension for good cause. No party shall receive more than one extension and no extension granted by PPRS shall exceed 20 business days, except in extraordinary circumstances.

## **3.5 PPRS CASE RECORD**

The case record in a PPRS proceeding shall include any answer, reply and responses submitted under the provisions of this part, except for any material submitted as part of such documents which has been designated as confidential. No submissions other than those provided for in this chapter shall be accepted as part of the case record, and any other submissions received by PPRS shall be returned promptly to the submitter when PPRS issues a decision or closes a case without a decision.

## **3.6 PPRS DECISIONS**

### **3.6.1 PPRS's "Findings, Recommendations and Conclusions"**

Where PPRS has docketed a complaint as a case and has not closed the case because of the respondent's nonparticipation, it shall formulate its judgment on the merits of the case in a statement of "findings, recommendations and conclusions" including any necessary corrective action and a time frame for such action. It shall complete this statement within 15 business days of its receipt of the last document authorized by section 3.4.4 or the expiration of the time limit for submitting such document. It shall then promptly provide a copy of such

statement to the respondent and offer it an opportunity to submit, within 10 business days of its receipt of the document, a brief statement for inclusion in the final decision.

Where corrective action is required, PPRS shall request a statement within the 10 day period that includes a statement as to whether the respondent agrees to take the corrective action(s) or chooses to take the issues to appeal, under Part 5. The respondent's time to submit a statement may be extended for good cause. The statement shall not become public before issuance of a final decision.

### **3.6.2 Finalizing a decision where corrective action is not required**

Where corrective action is not required, PPRS will proceed to issue a final decision promptly on receipt of the respondent's statement for inclusion in such decision or expiration of the time limit for such submission. The decision shall include the statement of "findings, recommendations and conclusions" and any statement submitted by the respondent in response thereto. A copy of such decision will be provided to the parties on issuance, and made available to the public. The decision will also be noted in the next periodic reports (see Part 7).

### **3.6.3 Finalizing a decision where corrective action is required**

A final decision shall include the statement of "findings, recommendations and conclusions" and any statement submitted by the respondent in response thereto.

If, in a case where corrective action is required, the respondent submits a timely statement indicating an intention to take the required corrective action or to appeal, PPRS shall immediately issue its final decision and provide the respondent and the complainant with copies. The decision will also be made available to the public and noted in the next periodic reports (see Part 7).

If the required corrective action includes a direction to change online privacy policies or practices, and the respondent submits a timely statement asserting that the required action is impossible to perform, PPRS shall promptly consider such claim. To be considered, a statement claiming impossibility of performance must include a specific statement of the factors that give rise to the impossibility and contain facts to support the assertions. If PPRS finds that a statement is lacking in the necessary specificity, it shall promptly advise the respondent that it has 5 business days from receipt of the notification to submit a statement of its intention with regard to taking the corrective action or appealing. If PPRS finds the statement contains the required specificity, it shall proceed to evaluate the claim with such additional evidence as it deems necessary and issue a decision that either modifies its earlier findings, recommendations and conclusions or affirms them. It shall then forward this statement to the respondent, with a request for a statement of intent within 5 business days from receipt.

If the respondent does not provide a timely statement indicating an intent to take corrective action or appeal, PPRS shall issue its final decision and provide the respondent and complainant with copies. PPRS also shall refer the file to the appropriate government agency and shall report the respondent's nonparticipation and the referral as well as the decision in the next periodic PPRS reports. In addition, if the respondent is a BBBOnLine privacy seal program participant, PPRS shall withdraw or suspend the seal.

## **Part 4        Appeals TO PRAB**

### **4.1        DISCRETIONARY APPEALS**

Any seal participant or complainant complaining about a seal participant may appeal a PPRS decision adverse in whole or part to their position if PRAB determines that:

- seal participants, the public and/or BBB*OnLine* staff would benefit from a PRAB panel's resolution of a substantial and important question regarding the interpretation or applicability of BBB*OnLine* privacy standards applicable to the case; or
- there is a substantial possibility that a PRAB panel would decide the matter differently.

### **4.2        RIGHT TO APPEAL**

A seal participant may appeal a PPRS final decision that includes corrective action requiring, either directly or as an indirect consequence of compliance with the decision, a significant change in the participant's company policies or practices applicable to all or a category of individuals from whom information is collected online.

### **4.3        FILINGS IN AN APPEAL**

#### **4.3.1    Filing an appeal**

The complainant or respondent may seek an appeal under this part by submitting to PRAB, within 5 business days of receipt of the final case decision a letter requesting an appeal. The letter shall specify the issues the party wishes to appeal, state whether the appeal is sought as of right or on discretionary grounds, and explain how the appeal qualifies on such grounds. A copy of the letter shall be sent by the party initiating the appeal (the appellant), to the other party (the appellee). PRAB shall, in its sole judgment, decide whether the requested appeal is warranted and advise the parties of its decision.

#### **4.3.2    Filing a cross appeal**

If PRAB grants an appeal, the appellee shall have the right to appeal any additional issues considered by the PPRS that have not been appealed by the appellant. To exercise this right, the appellee shall submit a letter of appeal to PRAB within 5 business days of receipt of the PRAB letter granting the appeal and copy the letter to the appellant. The letter shall specify the issues the appellee wishes to appeal.

#### **4.3.3    Explanation of reasons for appeal**

Any party appealing shall, within 10 business days of the receipt of the case record prepared by PPRS, submit to PRAB a letter explaining its position. It shall also forward a copy of its letter to the other party, who shall have 10 business days in which to submit a response to PRAB with a copy to the other party.

#### **4.3.4    Late filings**

If a party files an appeal or cross appeal or submits an explanation of the reasons for appeal after the specified time limits, the untimely document shall not be considered by PRAB, unless the party receives an extension for good cause. No party shall receive more than one extension and no extension granted by PRAB shall exceed 20 business days, except in extraordinary circumstances.

#### **4.4 FORWARDING OF CASE RECORD TO THE PARTIES**

Whenever PRAB determines an appeal is warranted, it shall forward a copy of the appeal letter to PPRS within 2 business days of its decision, and forward any subsequent letter of cross appeal promptly on its receipt.

Within 5 business days after receipt of notification from PRAB of a letter requesting a cross appeal or, if later, the expiration of the time limit for receipt of such notification, PPRS shall prepare the relevant portions of the case record and forward them to PRAB. PRAB shall thereafter mail the case record to the parties.

#### **4.5 RECORD ON APPEAL**

The record on appeal shall consist of the case record portions furnished by PPRS, the PPRS decision, the letters of appeal and the submissions under section 4.3.1, 4.3.2, and 4.3.3. No other written submissions shall be made during the appeal unless a) a party chooses to resubmit confidential information submitted below or is asked to do so by PRAB, or b) PPRS, on its own initiative or at the request of the panel, submits written information to the panel. Any participation by PPRS in PRAB proceedings is to represent the public interest in the integrity of the program.

#### **4.6 APPOINTMENT OF PRAB CHAIR AND MEMBERS**

##### **4.6.1 Appointment of the Chair**

The *BBBOnLine* Board shall select a person to serve as Chair of the PRAB.

##### **4.6.2 Appointment of PRAB members**

The *BBBOnLine* Board shall nominate persons to serve as “public”, “data expert”, and “company” members of the PRAB to be appointed by the PRAB Chair. These PRAB members will serve as the source of appointees for individual panels. Nominations shall be made whenever there is a need for additional members.

To qualify as a data expert member, an individual must have substantial technical experience in areas such as electronic data management, information systems, website management, etc. To qualify as a company member, an individual must be employed by a seal participant.

#### **4.7 APPOINTMENT OF PANEL**

##### **4.7.1 Appointment by Chair**

Upon granting of an appeal, the PRAB Chair shall proceed with appointment of a panel composed of PRAB members to hear the case, including designation of the panel member who will serve as its Chair. The Chair shall endeavor to appoint a panel that can hold a hearing within 20 business days of receipt of the last submission.

##### **4.7.2 Eligibility of panelists**

A company PRAB member will be considered as not qualified to sit on a particular panel if her/his employing company or corporate affiliate is the respondent, sells a product or service which directly competes with the product or service of the respondent involved in the proceeding or represents such an organization, or has any other conflict.

A PRAB member, including a noncompany member, shall disqualify himself/herself from service on a panel if for any reason arising out of past or present employment or affiliation he/she believes that he/she cannot reach a completely unbiased decision. In addition, PRAB shall inform the appellant and appellee of their right to object, for cause, to the inclusion of individual panel members, and to request that replacement members be appointed. Such requests will be subject to approval by the PRAB Chair.

#### **4.7.3 Composition of panel**

Each panel shall be composed of one "public" member, one "data expert" member, and one "company" member. The panel will meet at the call of its Chair, who will preside over its meetings, hearings and deliberations. The concurring vote of two of the three panel members is required to decide any substantive question before the panel. Any panel member may write a separate concurring or dissenting opinion which will be published with the majority opinion.

### **4.8 PROCEDURE OF PANEL**

As soon as the panel has been selected, PRAB will inform all parties as to the identity of the panel members. At the same time, staff will mail copies of the then record on appeal to each of the panel members, and will, in like manner, send them any subsequent response or request submitted by either party or PPRS under sections 4.3.3 or 4.5.

The panel, under the direction of its Chair, should proceed with informality and speed. All parties to a matter before the panel and PPRS shall be given 10 days notice of any hearing at which the matter is to be presented to the panel. Such notice shall set out the date and place of the hearing, and the procedure to be followed.

In the absence of the agreement of the parties, no facts or arguments will be considered by the panel if they are outside the facts in the PPRS Case Record or inconsistent with the arguments made before PPRS as reflected in that record. In the event a party offers newly discovered evidence germane to the issues before the panel which was not reasonably available to it during the PPRS proceedings, the panel may remand the case back to PPRS for its further consideration and decision.

The decision of the panel will be based upon the record on appeal and any summaries or arguments presented during the hearing. If a party has submitted confidential information on the appeal, the panel will honor the request for confidentiality, even though the party may have instituted the appeal, and will exclude the other party from the hearing during any discussion of the confidential material.

### **4.9 PANEL DECISIONS**

#### **4.9.1 Issuance of a decision**

The panel shall endeavor to forward its written decision, including the rationale for its conclusion to the PRAB Chair within 15 business days after the hearing. Upon receipt of a panel's decision, PRAB shall transmit such decision to the parties in the appeal. If the decision is in favor of the party who was the complainant in the PPRS proceedings, PRAB will ask the respondent to furnish it, within five business days of receipt of the decision, with a brief statement indicating its intentions with regard to implementing the corrective action directed by the decision and any comments it may wish to make on the decision. Except as provided in the following paragraph, on receipt of such statement, PRAB shall forward the statement and the decision to the other party, and make the decision public.

If the PRAB decision requires a change in online privacy policies or practices that was not required by the PPRS decision and the respondent's statement asserts that the required action is impossible to perform, PRAB shall

promptly consider such claim. To be considered, a statement claiming impossibility of performance must include a specific statement of the factors that give rise to the impossibility and contain facts to support the assertions. If PRAB finds that a statement is lacking in the necessary specificity, it shall promptly advise the respondent that it has 5 business days from receipt of the notification to submit a statement of its intention with regard to taking the corrective action. If PRAB finds the statement contains the required specificity, it shall proceed to evaluate the claim with such additional evidence as it deems necessary and issue a decision that either modifies its earlier decision or affirms it. It shall then forward this decision to the parties with a request for a statement of intent from the respondent within 5 business days from receipt.

#### **4.9.2 Noncompliance with a decision**

If the decision is in favor of the complainant and the respondent fails to indicate within the five day period described in section 4.9.1 that it intends to take the required corrective action(s), the Chair shall issue a Notice of Intent to the respondent. The Notice shall advise the respondent that the case will be referred to the appropriate government agency, and seal compliance review will be undertaken, within 10 business days of the respondent's receipt of the Notice, unless the Chair is notified by that date of the respondent's intent to take the corrective action. If the respondent does not submit a timely response indicating an intent to take the corrective action, the Chair shall direct that the matter be referred and that PPRS be notified of the need to withdraw or suspend the seal. PRAB shall also forward the decision to the other party and make the decision public, and the respondent's noncompliance and the referral shall be noted in the next periodic reports.

## **Part 5 Closing a case**

A dispute resolution file on a case shall be closed when:

1. PPRS has issued a final decision and neither party has requested an appeal within the time limits or a requested appeal has not been granted;
2. PRAB has issued a decision in favor of the respondent or the respondent has agreed to comply with a PRAB decision in favor of the complainant;
3. PPRS or PRAB has referred the matter to a government agency because of the respondent's nonparticipation in the process or failure to comply with a decision; or
4. PPRS or PRAB refuses to proceed with the case because of a party's failure to abide by its agreement under section 1.5 to hold information in confidence.

When a case has been closed, no further materially similar complaints on the claim(s) in question need be accepted by PPRS and where closure results from a decision on the merits, no further materially similar complaint on the claim(s) in question shall be accepted by PPRS.



## **Part 6        Reporting Of PPRS/PRAB Activity And Publication Of Decisions**

PPRS shall publish PPRS reports at least 4 times each year, summarizing matters concluded during the previous period. These reports shall:

With respect to public inquiries, provide a statistical summary of the number and nature of contacts from the public and the actions taken by the PPRS with respect to those inquiries.

With respect to complaints:

Provide a statistical report of the number and nature of complaints deemed ineligible for processing during the period, including the specific reason for a determination of ineligibility;

Provide a statistical report of the number of cases decided during the period, including the number decided in the complainant's favor and the number in the respondent's favor and the type of corrective action required (correction of error that occurred in individual case, change in policy, change in practice).

For each complaint deemed eligible in which a respondent organization or individual fails to submit a timely answer and/or declines to participate in the PPRS process, provide a summary report (including the name of the organization) of the nature of the claim and the PPRS action in the case.

PPRS decisions and PRAB decisions shall be published on the *BBBOnLine* website promptly after issuance.