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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

FOIP PRACTICE NOTE 10

Public Bodies' evidence and arguments for inquiries

“Evidence” is the material that public bodies must submit in inquiries to establish the facts upon which the Commissioner makes decisions. “Arguments” are the interpretation of the law based on the facts.

In most inquiries under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), Public Bodies have the burden of proof. Even when Public Bodies do not have the burden of proof, the Commissioner typically is reviewing the decisions of Public Bodies.

Public Bodies do not meet the burden of proof if they do not provide evidence to support written or oral arguments made in inquiries. Providing arguments alone is not sufficient. Arguments are not a substitute for evidence.

It is also not sufficient to provide the Commissioner with records, and leave it up to the Commissioner to figure out from the records the facts upon which he will base his decisions. The Commissioner requires that persons within Public Bodies provide evidence by speaking to the contents of records. Affidavit evidence is preferred.

Public Bodies that do not provide evidence for inquiries risk having decisions go against them for lack of evidence to support their arguments.

Practice Notes are prepared by the Office of the Information and Privacy Commissioner to assist persons in using the FOIP Act. Practice Notes do not constitute orders under the FOIP Act. They are not binding. They are intended as advice only.