



Office of the Information  
and Privacy Commissioner

# 410, 9925 – 109 Street  
Edmonton, Alberta  
Canada, T5K 2J8  
Tel: (780) 422-6860  
Toll Free within Alberta: 310-0000  
Fax: (780) 422-5682  
Web: [www.oipc.ab.ca](http://www.oipc.ab.ca)  
Email: [generalinfo@oipc.ab.ca](mailto:generalinfo@oipc.ab.ca)

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## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### PRACTICE NOTE 5

#### PREPARING RECORDS AND SUBMISSIONS FOR INQUIRIES

Different public bodies prepare their records in different ways. We have done enough inquiries now to suggest what we believe are the best means of preparing records. The following process will also assist the public body in its preparation for an inquiry.

#### **A. How should the record(s) be prepared for an inquiry?**

##### ***Indexing the record(s)***

An index of the record(s) in table form is the first step in preparing for an inquiry. That index should include the following:

1. All the pages numbered in sequence. This may not always be practical. For example, with two binders of documents, each one may already have pages numbered in sequence. In that case, if the Record is identified, the pages need no further numbering; identification as “Record A, page 2, is sufficient. A loose collection of diverse records should be numbered in sequence.
2. For each page upon which information has been withheld, identification of the section numbers of the *Freedom of Information and Protection of Privacy Act* (the Act) under which any information has been withheld.
3. A description of the document in which information has been withheld or disclosed, and
4. The page number(s) on which information has been withheld or disclosed. The index should account for every single page of the records.

Ideally, two tables are produced: one according to the sections of the Act, and one according to page numbers. For example:

**Table 1**

<b>Section of the Act</b>	<b>Page number(s)</b>
Section 15(1)(a)(ii),(b), (c)(i)	18-19, 20-22; Record B
Section 20(1)(a)(ii)	23
Section 21(1)	1-17, 18-22; Record A: 1-5
Section 24(1)(c)	18-19, 23

**Table 2**

<b>Page Number(s)</b>	<b>Description</b>	<b>Section(s)</b>
1-17	Cabinet minutes	21(1)
18-19	Minister's report to Cabinet	21(1), 15(1)(a)(ii),(b), (c)(i), 24(1)(c)
20-22	Third party report to Treasurer	21(1), 15(1)(a)(ii) (c)(i),(b),
23	Public Body X's letter to Minister of Public Body Y re: development in City Y	20(1)(a)(ii), 24(1)(c)
24-30	Memo re: Policy Options for Public Body Y	Disclosed
Record A	Treasury's financial analysis for Cabinet	21(1)
Record B	Third Party's report to Public Body X	15(1)(a)(ii),(b),(c)(i)

***Preparing the record(s)***

The public body should provide the Commissioner with the entire package of records including the documents disclosed (unsevered). If any information has been withheld, the public body may submit the record(s) in one of two ways:

1. Ideally, by reproducing the withheld portion of the record in red ink, leaving the disclosed portion in black ink, and clearly indicating, nearby each withheld portion, the applicable section(s) of the Act. Some public bodies have photocopiers that produce red-ink text for marked passages.
2. Alternatively, by providing a copy of the record with:
  - (i) the withheld information outlined or highlighted, and

(ii) the relevant section number(s) of the Act clearly indicated nearby that withheld information.

### ***Submitting the record(s)***

The public body should submit the summary index of the record(s) and the record(s) **no less than two weeks** before the date set for the inquiry.

## **B. How should the submission be prepared for an inquiry?**

### ***Preparing the written submission***

The purpose of a submission is to inform the Commissioner about the central issues of the case and to alert all parties to the matters to be raised and questioned in the course of the inquiry.

A submission should contain the following:

1. Table of contents
2. Summary of arguments
3. Supporting documents, authorities and other useful information
4. Appendices (e.g. affidavits) if necessary.

Information that may be useful to the Commissioner includes:

(i) excerpts from relevant legislation or regulations that apply to the operations of the public body and that relate to the decisions exercised by the head

(ii) excerpts from policy manuals that set out practices or policies followed by the public body that relate to the decisions exercised by the head

(iii) relevant case law

(iv) decisions made by Information and Privacy Commissioners in other jurisdictions that may be of assistance to the Commissioner in his consideration of the issues.

### ***Submitting the written submission***

Unless alternative arrangements have been made by the IPC Office, each party to the inquiry should send a written submission to the Commissioner **no less than two weeks** prior to the date of the inquiry. The Portfolio Officer will advise how many copies are to be provided for distribution to the other parties to the inquiry. All copies are to be provided to the Commissioner's office, and the Commissioner's office will arrange for distribution of the submissions to each party.

The Commissioner has the authority to decide whether submissions will be exchanged.

In the event the inquiry is a closed written inquiry, each party will have an opportunity to submit an additional submission (rebuttal) to respond to the other parties' submissions. However, if one of the parties chooses not to submit an initial written submission, it cannot subsequently submit an additional submission (rebuttal) to the other parties' submissions. Parties should assume that whatever they put in their submissions will be read by the other parties.

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