



Inquiry: Preparing Records at Issue

In this document, “Commissioner” means the Commissioner or the Commissioner’s delegated Adjudicator.

When a public body, custodian or organization (respondent) withholds entire pages of records or severs information from records in responding to an applicant, the respondent must provide the withheld records or severed information for the Commissioner to review in the inquiry. (This requirement does not apply to records over which solicitor-client privilege, litigation privilege or informer privilege is being claimed. For those types of records at inquiry, please refer to the “Privilege Practice Note” at www.oipc.ab.ca.)

“Records at issue” are the entire records in response to an access request. “Information at issue” is the information severed from pages that were provided to the applicant. An “index of records” helps to organize the records at issue. The “records at issue” are not exchanged with other parties, but the “index of records” is exchanged with other parties.

When the Commissioner requests records at issue during an inquiry, respondents must:

- **Document all redacting decisions made regarding the records.**

If the respondent decides to release more information following mediation/investigation, the records and information at issue will consist only of records and information still being withheld.

- **Provide two copies, one of them electronic, if practicable, and the other in paper.**
- **Provide copies of the records at issue, not originals.**

A respondent must keep its own set of records at issue so that it can make arguments or respond to questions.

- **Indicate the information that has been withheld or severed, and cite under what provision.**

With respect to severed information, the preferred format is unredacted versions that identify the severing decisions (e.g. by highlighting or outlining). Where this is not practicable, the Commissioner may accept both severed and unredacted versions in which case two copies of each version are required, preferably one in electronic form.

The section numbers of the applicable legislation (i.e. exceptions to disclosure) that are being relied on to withhold records or information are to be noted on the page adjacent to each redaction.

Blank pages of records withheld in their entirety need not be provided where there are large numbers of such pages, or where all the records are withheld, but it must be made clear in an index

of records stating how many such records there are, and which section of the applicable legislation is being applied to each page.

If a respondent is proposing to disclose information but a third party objects to its disclosure, then this information should be labeled as “third party objection”.

- **Document only those redaction decisions that have been or are being communicated in a response to an applicant.**

If an applicant has made a decision to apply a particular provision (i.e. exception to disclosure) and has communicated this decision to the applicant, then the notation as to which exception was applied should refer to only that provision.

If a respondent makes a subsequent decision to withhold the records or information under additional provisions or for additional reasons, it must first communicate this decision to the applicant, before providing the records to the Commissioner for the inquiry.

The records that are provided should indicate on each page – whether severed in part or withheld in full – and in the index of records, that information has been severed under a different provision or for another reason than was stated in its initial response to the applicant. If records were already provided, send new copies only of the pages on which there are changes.

- **Number the records, with the numbering also on records provided to third parties and the applicant.**

If severed or blank pages provided to a third party or applicant have different numbers than those provided to the Commissioner for the inquiry, it becomes difficult, and in some cases impossible, to identify the records to which the parties are referring in their inquiry submissions.

- **Be legible.**

The records should be reviewed to make sure that the copies can be read, to the fullest extent possible.

- **Be accompanied by an index of records if more than three (3) records are at issue.**

The respondent must prepare an index of records in a table format when there are more than three (3) records at issue. The index of records should contain a description of the nature of the record or information withheld (e.g. an email, letter, briefing note, etc.), its number, and the provision of the applicable legislation (i.e. exception to disclosure) the respondent has applied to withhold the information.

The index of records should include the following:

- All of the pages numbered in sequence, unless this is not practical.

For example, with two binders of different documents, each one may already have pages numbered in sequence. In that case, the binders may be described as “Record A” and “Record B” and the pages do not need to be renumbered; identification such as “Record A, page 2” is sufficient. A loose collection of diverse records, however, should always be numbered in sequence.

- A column containing a description of the pages/documents (e.g. “email”, “letter”, “briefing note”, “report”, etc.). It is helpful to include titles and dates of documents if that information is not at issue.
- For withheld or severed pages, a column identifying the section number(s) of the applicable legislation under which the information has been withheld.

Index of Records Example

The index of records should account for each of the withheld or redacted pages, and every section of the applicable legislation applied. As a result, the index of records should be comprised of two tables:

- Table 1 according to page numbers with descriptions of the pages/documents.
- Table 2 according to the sections of the applicable legislation in which the descriptions need not be repeated.

Table 1 Example

Page No.	Description	Section(s) of the Act
1-17	Cabinet minutes	22(1)
18-19	Minister’s report to Cabinet	22(1), 16(1)(a)(ii),(b), (c)(i), 25(1)(c)
20-22	Third party report to Treasurer	22(1), 16(1)(a)(ii), (b), (c)(i)
23	Public Body X’s letter to Minister of Public Body Y re: development in City Y	21(1)(a)(ii), 25(1)(c)
24-30	Memo re: Policy Options for Public Body Y	Disclosed
Record A	Treasury’s financial analysis for Cabinet	22(1)
Record B	Third Party’s report to Public Body X	16(1)(a)(ii),(b),(c)(i)

Table 2 Example

Section(s) of the Act	Page number(s)
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Section 16(1)(a)(ii),(b), (c)(i)	18-19, 20-22; Record B
Section 21(1)(a)(ii)	23
Section 22(1)	1-17, 18-22; Record A: 1-5
Section 25(1)(c)	18-19, 23

The index of records is to be sent by the respondent to the Commissioner and all other parties named on the Notice of Inquiry by the deadline for the initial submission of the respondent. It should be labelled “Index of Records (Provided to the Parties)”.

Because the index of records must be provided to the other parties, **it should not itself reveal any information that the party preparing it seeks to withhold from the other parties.**

Preparing Records at Issue Checklist

- Are the records numbered?
- Is the numbering consistent, such that the numbers on the records are the same as those on records provided previously to the applicant or a third party?
- Are the records legible? If the records are in electronic form, can they be opened?
- Are all redaction decisions, including recent ones, clearly indicated on the records?
- Has the requestor been told about all the redaction decisions documented on the records?
- Should an index of records be provided? If so, has an index of records been prepared?
- Has a set of records been kept for the applicant’s use in the inquiry?

Glossary of Terms

- **Adjudicator:** The person that the Commissioner has delegated to be the decision-maker in the inquiry.
- **Affected parties:** Individuals or other organizations that could be affected by the decision made in the inquiry.
- **Applicant:** The individual who formally requested access to information or requested correction of their personal or health information under the FOIP Act, HIA or PIPA.
- **Arguments:** The reasons why a party believes the evidence shows certain facts to be true, and why the Commissioner should interpret the law a certain way.
- **Complainant:** The individual who made a formal complaint that personal information was collected, used or disclosed in contravention of the FOIP Act, HIA or PIPA.
- **Custodian:** The health service provider, whether an individual or an organization, from which the information was requested or against which the complaint was made (also called “respondent”).
- **Evidence:** Information/material that establishes the facts on which a party is relying.
- **Interveners:** Individuals or organizations whose opinions or specialized knowledge can provide a broader understanding of the issues at inquiry.
- **Mediation/investigation:** A process authorized by the Commissioner to explore opportunities for resolution with the parties.
- **Notice of Inquiry:** Identifies the parties involved in the inquiry and their contact information, the issues that will be addressed, and a schedule for submissions.
- **Organization:** The business, corporation, union or partnership from which the information was requested or against which the complaint was made (also called “respondent”).
- **Parties:** The respondent (public body, custodian or organization), applicant/complainant, or other affected parties who are part of the inquiry.
- **Public body:** The government department or other public entity from which the information was requested or against which the complaint was made (also called “respondent”).
- **Respondent:** The public body, custodian or organization that has duties under the legislation.
- **Submissions:** Informs the Commissioner and the other parties about what a party thinks are the central issues in a case, and provides evidence and makes arguments about how those issues should be decided.