



# Inquiry: Preparing Submissions

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

The following information outlines how to prepare submissions for an inquiry. There are also tips for providing evidence and arguments in a written submission.

## Preparing Written Submissions

The purpose of a submission is to inform the Commissioner and the other parties about what a party thinks are the central issues in a case, and to provide their evidence and make their arguments about how those issues should be decided. Ideally, a submission should include the following:

- Table of contents;
- Summary of arguments;
- Detailed arguments; and
- Supporting evidence, documents, authorities and other useful information.

Information that may be useful to the Commissioner includes:

- Excerpts from relevant legislation or regulations that apply to the operations of the public body, custodian or organization, and that relate to the issues in the inquiry;
- Excerpts from policy manuals that set out relevant practices or policies of the public body, custodian or organization;
- Excerpts from relevant orders and relevant court decisions; and
- Excerpts from decisions made by Information and Privacy Commissioners in other jurisdictions that may be of assistance to the Commissioner when considering the issues.

Please do not provide copies of statutes, regulations, court decisions or prior decisions by the Commissioner in their entirety. Instead, provide the relevant excerpt as well as the citation, if possible (including the specific provision or paragraph referred to).

The maximum length for an initial submission is 20 pages. The maximum length for a rebuttal submission is 10 pages. The Commissioner may decline to consider lengthy submissions. If page limits are exceeded, additional time to make a submission may be given to allow for a shorter and more concise submission to be provided.

A party's submission is to be received by the Commissioner and all other parties listed on the Notice of Inquiry in accordance with the schedule set out in that document.

If a party wishes to make *in camera* written inquiry submissions that are not provided to other parties, that party must follow the instructions set out in the form for requesting *in camera* submissions. The form is available at [www.oipc.ab.ca](http://www.oipc.ab.ca). Approved *in camera* submissions should be labelled as such.

For undisclosed affected parties, the Commissioner's office will forward the submissions provided by and intended for unrepresented undisclosed affected parties.

## Evidence and Arguments

In most inquiries, the public body, custodian or organization (respondent) has the burden of proof. Because the Commissioner is typically reviewing whether a decision was made in accordance with the applicable legislation, respondents are usually in the best position to support their decisions even when they do not formally have the burden of proof.

"Evidence" is the material that parties must submit in inquiries to establish the facts on which they are relying. "Arguments" are the reasons why a party thinks that the evidence shows certain facts to be true, and why the Commissioner should interpret the law in a particular way. This may include relying on previous orders issued by the Commissioner, decisions in other jurisdictions or court decisions.

Parties may not succeed in an inquiry if they do not provide evidence to support their arguments. If the success of an argument depends on underlying facts, providing the argument alone is not sufficient. The underlying facts must be established by evidence. As well, evidence should not be provided in the form of unattributed assertions made in the context of an argument. If a fact is being put forward, it must be shown how this fact is known to be true (e.g., by way of a statement, preferably sworn, of someone who knows the fact, or by other objective evidence, such as documents).

It is not sufficient to provide the Commissioner with records and leave it up to the Commissioner to try to draw from the records the facts on which the decisions will be based. The Commissioner requires that persons representing the public body, custodian or organization provide evidence speaking to the contents of the records, for example by explaining how each part of a record for which an exception to disclosure is claimed falls within the exception. If the explanation depends on certain facts being true, the public body, custodian or organization must provide evidence of these facts.

It is also important to explain how the cited legislation, policies, orders and/or court decisions apply to the facts of the case at inquiry. It is not sufficient to provide references to, or excerpts of, legislation, policies, orders or court decisions.

Parties that do not provide the evidence that is necessary to support their arguments risk having decisions go against them. See *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 593 at para. 42.

## Initial and Rebuttal Submissions

An initial submission should include the party's argument about how the relevant sections of the legislation apply in the circumstances of their case and explain how the evidence supports its position.

A rebuttal submission should focus on the evidence and arguments provided by the other parties in their initial submissions. Rebuttal submissions should only reply to what is contained in the initial submissions of the other parties, and should not raise any new issues or exceptions that were not listed in the Notice of Inquiry.

## Providing Submissions to Other Parties

Submissions should be clearly labelled "Submission (Provided to Other Parties)" to indicate the submission has been or is being provided to other parties. (This does not apply to when *in camera* submissions have been approved or when submissions are to be forwarded by the Commissioner's office.)

## 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.