



## **ADJUDICATION PRACTICE NOTE 1**

### ***PREPARING SUBMISSIONS, RECORDS AND INDEXES FOR INQUIRIES***

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

There is no formal requirement for the form of submissions in an inquiry. However, the following information, which outlines what this office regards as being the most useful format, is provided to assist parties in preparing for an inquiry.

The instructions below regarding records and indexes apply to public bodies, organizations and custodians in inquiries that involve their refusal to disclose information in response to an access request. The records or information withheld from the other party are referred to as the “records at issue”.

#### **Preparing and providing 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;
- Arguments in greater detail; 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, organization or custodian and that relate to the issues in the inquiry;
- excerpts from policy manuals that set out relevant practices or policies of the public body, organization or custodian;
- relevant orders of the Office of the Information and Privacy Commissioner and relevant court decisions; and
- decisions made by Information and Privacy Commissioners in other jurisdictions that may be of assistance to the Commissioner when considering the issues.

A party's submissions are to be received by the Commissioner's office and all other parties listed on the Notice of Inquiry in accordance with the schedule set out in that document. The submissions should be labelled "Submission (Exchanged Among the Parties)".

If a party wishes to make *in camera* written inquiry submissions that are not exchangeable, that party must follow the instructions set out in the document entitled *Inquiry Procedures*.

### **Preparing and providing records at issue (if applicable)**

Where an inquiry involves a refusal to disclose information in response to an access request and there are therefore records at issue, the records at issue are to be provided to the Commissioner's office by the public body, organization or custodian. For information that has been withheld, the records should be submitted by providing a copy of them with the withheld information outlined, highlighted or in a different colour of ink, and with the relevant section number(s) of the Act under which the information has been withheld clearly indicated next to that withheld information.

The Commissioner's office may ask the public body, organization or custodian to provide an advance copy of the records at issue, which will be used to identify any affected parties. Only one copy is required at that time, and an index, as described below, is optional.

After the Notice of Inquiry is issued, two copies of the records at issue (an official file copy and a working copy for the Commissioner) should be provided to the Commissioner's office by the public body, organization or custodian no later than the deadline for that party's initial submissions in the inquiry.

The records at issue should be clearly labelled "Records at Issue (For the Commissioner Only, Not Exchanged Among the Parties)".

### **Preparing and providing an index of records (if applicable)**

Once the Notice of Inquiry is issued, and if the inquiry involves a refusal to disclose information in response to an access request and there are more than ten pages of records at issue, an index of the records in table form must be prepared by the public body, organization or custodian. The index should include the following:

1. All of the pages numbered in sequence, unless this is not practical. For example, with two binders of 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 need no further numbering; identification such as "Record A, page 2" is sufficient. A loose collection of diverse records, however, should always be numbered in sequence.
2. A column containing a description of the pages/documents (e.g., "briefing note", "e-mail", etc.). It is helpful to include titles and dates of documents if that information is not at issue.

3. For the page(s) on which information has been withheld, a column identifying the section number(s) of the applicable Act under which the information has been withheld.

Two tables should be produced in the index: one according to page numbers (with descriptions of the pages/documents) and one according to the sections of the applicable Act (in which a repeat of the descriptions is not necessary). The index should account for every page of the records on which information has been withheld and every section of the Act applied. For example:

Table 1

<i>Page No.</i>	<i>Description</i>	<i>Section(s) of the Act</i>
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

<i>Section(s) of the Act</i>	<i>Page number(s)</i>
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

If an index is required, it is to be received by the Commissioner's office and all other parties listed on the Notice of Inquiry by the deadline for the initial submissions of the public body, organization or custodian. Because the index 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.

The index should be labelled "Index of Records (Exchanged Among the Parties)".

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Practice Notes are prepared by the Office of the Information and Privacy Commissioner of Alberta to assist persons in using the applicable Act. These notes do not constitute Orders under the Act and are not binding. They are intended as advice only. Copies of all Practice Notes and the *Inquiry Procedures* are available on the Office's website at [www.oipc.ab.ca](http://www.oipc.ab.ca).

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