

## **Preparing for a Review**

### *Guidelines from the Office of the Information and Privacy Commissioner*

#### **Introduction**

This material is intended as advice only, and is not binding. For more details on the *Access to Information and Protection of Privacy Act*, please consult your *Policy & Procedures Manual*.

There are usually two different types of documents involved in a formal review by the OIPC:

- 1) Record or documents responsive to an access request; and
- 2) Submission or written arguments in support of your position.

#### **Preparing the Record**

The public body must provide to the Commissioner the entire package of records, including those records which were disclosed to the Applicant, and those which were withheld. The records that the public body has refused to disclose in full or in part will not be disclosed by the OIPC to the Applicant.

If any information has been withheld, the public body should provide a copy of the record with the withheld information underlined or highlighted, and the relevant section number(s) of the Act clearly indicated beside or near that withheld information. Remember to note all exceptions that you have used in withholding the record, or portion of the record.

In preparing for the review, the public body should prepare an index of the record(s) in table form. See Section 3.11 of your *Policy and Procedures Manual* for more information. When preparing the index, consider the following:

1. All the pages of your records should be numbered in sequence. This may not always be practical. For example, with 2 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 *Access to Information and Protection of Privacy Act (ATIPPA)* under which any information has been withheld is important.
3. Normally, all exceptions should be claimed at the time a response is issued to the Applicant's access request. Should you wish to invoke any additional discretionary exceptions under the *ATIPPA*, you must inform the Applicant and this Office of your intention to do so within 14 days of receipt of correspondence from this Office notifying you that the Applicant has filed a Request for Review. Any discretionary exceptions received after this period will not be considered by this Office.

4. A description of the document in which information has been withheld or disclosed, and
5. The page number(s) on which information has been withheld or disclosed. The index should account for every single page of the record.

### **Informal Resolution**

After the record has been prepared and forwarded to the Commissioner's Office as described above, there is a window of opportunity for informal resolution. Should you have any suggestions as to how the Review could be informally resolved, please contact the Commissioner's Office right away. If attempts at an informal resolution are unsuccessful, the Review continues on to the formal investigation phase, and you will be given an opportunity to support your decision regarding access to the records in question by making a formal written submission.

### **Preparing the Written Submission**

A public body has the burden of proof if it claims that access should or must be refused under the *ATIPPA*. The burden is not on the applicant to establish that an exception does not apply. This means that it is not enough to write the Commissioner and simply say "access is denied because of section 22," or some other exception. It is up to the public body to "make the case" that a particular exception(s) applies. That means presenting reasons why the exception is appropriate for the part of the record that has been withheld.

This is done in the form of a written submission. The submission should contain the arguments of the public body in support of its decision to withhold a record or portions of a record, and include any supporting documents, authorities, or written statements of relevant officials. In the event that a written submission is not received by the OIPC within the designated time frame, the Commissioner's investigation will proceed based on the information currently on file.

Other information which would be useful to the Commissioner includes:

- 1) Excerpts from relevant legislation, regulations or policies that apply to the operations of public bodies which relate to the decisions exercised by the head;
- 2) Relevant Court decisions or past decisions of the Information and Privacy Commissioner in this or other jurisdictions.

A written submission setting forth your reasons for applying a section or sections of *ATIPPA* may be released in whole or in part to the other party, which means that parties should assume that any material included in their submissions will be read by the other party. If you have concerns about having your reasons disclosed, please indicate whether you wish to have part or all of your submission considered "confidential," along with your reasons for requesting this.

Should you have any questions or concerns about the Review process, please do not hesitate to contact the Commissioner's Office.