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# Practice *Direction*

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## Guidelines for individuals whose personal information is at issue in an appeal

### Background

People sometimes want access to government records that contain someone else's personal information. Under the *Act*, we refer to that someone else as an "affected person."

If someone wants access to information held by an institution, he or she makes a request under the *Act*. A request may be for information of a named affected person, or it may be general in nature but encompass specific information about an affected person (e.g., a request for all information about witnesses to motor vehicle accident).

Here are answers to questions most frequently asked about appeals where the personal information of an affected person is at issue.

### *What is "personal information?"*

According to the *Act*, personal information means recorded information about an identifiable individual. This may include your name, address, sex, age, education, medical and employment history, views or opinions, or any other information about you held by a government institution.

### *Why would someone want access to my personal information?*

There could be many reasons why someone might want access to your personal information. Here are a few examples:

1. You registered a complaint that a neighbour's dog is causing a disturbance. The neighbour wants to know who made the complaint; or
2. You provided a witness statement to the police about a car accident. The owner of one of the vehicles is seeking access to that statement; or
3. Someone requests a government job competition file where you were a candidate.

### *Why didn't the institution notify me when the access request was first made?*

If the institution that received the request decides not to disclose your information, you usually will not be contacted. However, as the IPC has now received this request in the form of an appeal, we must now contact you.

### *What is an appeal?*

A requester can ask the IPC to review an institution's decision not to disclose information in response to an access request under the *Act*. This is referred to as an appeal.

### *What happens once the IPC receives an appeal?*

If it is not possible to settle the appeal through mediation, an Adjudicator sends a Notice of Inquiry to one or more parties. The Notice of Inquiry summarizes the background of the appeal, describes the records at issue, sets out the issues to be decided, and invites the party to submit representations in writing. Once all necessary representations are received, they are considered by the Adjudicator, and an order is issued which disposes of some or all of the issues.

### *What are representations?*

Representations are arguments and/or evidence presented to the Adjudicator to persuade him or her to resolve the appeal in a particular way.

### *Why did the IPC ask me to make representations?*

The IPC may ask an individual to submit representations as an affected person when it appears that the records at issue may contain that individual's personal information. The *Act* gives an affected person the right to comment on whether this information should be disclosed.

### *How do I make representations?*

You may make representations by providing a written response to the issues raised in the Notice of Inquiry, responding to some or all of the issues as you see fit. If you feel that the information should *not* be disclosed and that the exemption applies, this is your opportunity to provide the IPC with specific reasons why you believe so.

### *Why should I make representations?*

With respect to personal information, the institution (where it has denied access) and the affected person share the responsibility for establishing why the information should not be disclosed. In appeals involving this type of information, it is important that the Adjudicator hear from the affected person for two reasons: (1) the institution is not obliged to provide representations to support its decision not to disclose the information; and (2) the affected person is in the best position to describe the effects that disclosure could have on his or her interests.

### *What kinds of information should I include?*

The Notice of Inquiry will set out the issues to be addressed. For example, you might be asked to explain why the records contain your personal information, or to present arguments or evidence to show why disclosure of the information would constitute an unjustified invasion of your personal privacy.

### *When are my representations due?*

A party is generally given 21 days to submit representations to the Adjudicator. The exact due date is specified in the Notice of Inquiry.

*What might happen if I do not make any representations?*

If you do not make representations, the Adjudicator will proceed to determine the issues in their absence. By making representations, you may improve the chances of obtaining a favourable result in the appeal.

*What if I agree that my personal information can be disclosed?*

Where this is the case, you should simply indicate in your representations that you consent to disclosure of the information. If you consent only to partial disclosure, it is necessary to identify for the Adjudicator the specific portions of the record that you agree may be disclosed.

*Will my representations be shared with any other party?*

The Adjudicator may share your representations with the other party or parties to the appeal, unless there are overriding confidentiality concerns. If you would like any portion of your representations withheld, you must explain in detail the reasons for your request. Please see *Practice Direction* number 7 for more detailed information about sharing of representations.

*What happens after the representations are submitted?*

The Adjudicator will consider the representations and resolve some or all of the issues in the appeal by issuing a written order. The Adjudicator will send copies of this order to you and the other parties involved in the appeal by mail.

*Will my personal information be disclosed?*

In most cases, this depends on whether the release of the information would be considered an unjustified invasion of your personal privacy. The *Act* contains a number of provisions which will help the Adjudicator make this determination. These provisions are described in detail in the Notice of Inquiry.

*Who can answer additional questions?*

For general questions about personal information at the appeal stage, please contact the IPC's Assistant Registrar. This individual's name and telephone number appear on the covering letter attached to the Notice of Inquiry. The IPC can also be reached by dialling 1-800-387-0073 (in the Toronto area, dial 416-326-3333).

For questions about the nature of the records which contain your personal information, please contact the Freedom of Information and Privacy Co-ordinator at the institution identified in the Notice of Inquiry.

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If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

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