



# Practice *Direction*

## Participating in a written *FIPPA* or *MFIPPA* inquiry

### Introduction

The adjudication of access-to-information appeals at the IPC is accomplished by means of an inquiry. The inquiry is a formal adjudicative process.<sup>1</sup> Where an institution claims that a record or part is exempt, it has the burden of proving that the exemption applies.<sup>2</sup>

Generally speaking, in a written inquiry, the adjudicator will not speak directly to any party in the absence of the other parties.<sup>3</sup> Rather, the adjudicator will receive written representations. Representations are arguments or evidence presented to the adjudicator to persuade him or her to resolve the appeal in a particular way.

This practice direction sets out requirements and guidelines for representations, including the number of pages and types of attachments that may be submitted. It also offers practical guidelines to help improve the effectiveness of representations.

<sup>1</sup> See *FIPPA* sections 52-54 and *MFIPPA* sections 41-43; also *Code of Procedure* section 7

<sup>2</sup> See *FIPPA* section 53; *MFIPPA* section 42. In some instances, affected parties or third party appellants resisting the disclosure of information about them may also have the burden of proof.

<sup>3</sup> Verbal contacts with parties are handled by the Adjudication Review Officer.

### Representations

When inviting a party to provide representations, the adjudicator sends a Notice of Inquiry outlining the facts and issues in the appeal. Representations should be relevant and factual, and refer to the connections between exemptions claimed and the records in question, or alternatively, explain why an exemption should not apply.

Parties should carefully review the Notice of Inquiry and any accompanying materials and address each of the issues raised in the Notice of Inquiry. Parties are also encouraged to review any relevant IPC orders, other case law or statutory materials and include references to such material in their representations. Copies of this material should also be provided to assist the adjudicator.

Parties are limited to submitting one set of representations in response to each invitation to do so. Unsolicited supplementary or additional representations will only be considered by the adjudicator in exceptional instances.

Representations should be relevant and concise. Except in unusual circumstances, initial representations submitted by any party should be:



- if typewritten, no longer than 20 pages in point size 12 or larger, double-spaced, on paper not larger than 8 1/2 x 11 inches; or
- 20 handwritten pages of the same size.

Reply and sur-reply representations should also conform to these standards, and should not be longer than 10 pages.

Representations that are unduly lengthy, repetitive or disrespectful of any other participant or the IPC may be rejected or disregarded by the adjudicator.

Attachments may also be provided, but their relevance must be explained in the representations. Attachments whose relevance is not satisfactorily explained, or self-evident, may not be considered by the adjudicator.

## Sharing of representations

Representations may be shared with the other party or parties to the appeal, unless there is an overriding confidentiality concern. Please see Practice Direction 7 for more detailed information about sharing of representations. Parties must explain which portions of their representations, if any, they would like withheld from other parties to the appeal. Parties must also identify the parties from whom they wish this information to be withheld. It is important that parties provide detailed reasons for their request to have the adjudicator withhold their representations, in whole or in part.

## Time for submitting representations

Representations must be submitted within the time period indicated in the cover letter to the Notice of Inquiry provided to each party. If a party requires additional time to provide representations, a request for an extension of one week or less may be made verbally to the Adjudication Review Officer, or may be made in writing. A request for an extension of more than one week must be made in writing, addressed to the adjudicator, and must include an explanation of why additional time is required.

Depending on the circumstances of the case, late representations may not be considered by the adjudicator.

## Additional Information

The IPC has issued Practice Directions to provide general information to specific types of parties involved in an appeal, and to assist them in making representations. Please see Practice Direction number 3 — Guidelines for individuals whose personal information is at issue in an appeal, Practice Direction number 4 — Guidelines for parties whose commercial or business information is at issue in an appeal and Practice Direction number 5 — Guidelines for institutions in making representations, for more specific information.

## Practice Direction

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