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Practice *Direction*

Guidelines for institutions in making representations

Introduction

Each exemption under the *Act* has certain requirements which must be satisfied. It is important that institutions claiming an exemption address each component of these requirements. If representations are too general or if the necessary connections are not clearly made, the representations will fail to establish that the exemption applies. The questions below are intended to assist institutions in assessing the issues in an appeal and the topics to cover in their representations.

For every exemption claimed:

- Have you clearly identified the record or part at issue?
- Have you identified the exemptions that apply to each part of the record which has been withheld from disclosure?
- Have you reviewed the Notice of Inquiry which the Adjudicator has provided to your institution for guidance?
- Have you addressed each of the issues and/or answered each of the questions set out in the Notice of Inquiry?

- Have you reviewed previous orders to determine how the exemption has been interpreted in the past?

Where an exemption is discretionary:

- Have you considered whether the institution should rely on this exemption, in the particular circumstances of the appeal?
- If so, have you explained the basis for the head's exercise of discretion to withhold the record?

*Where an exemption requires proof that a particular consequence would result from disclosure of a record:**

- Have you identified the consequence in detail?
- Have you provided detailed and convincing evidence establishing a reasonable expectation of the harm described in the exemption?

* e.g., the third party information and danger to safety or health exemptions

*Where an exemption requires proof that a record was prepared for a particular purpose:**

- Have you provided facts to support your claim?
- Have you identified the facts which apply to each component of the exemption?

* e.g., the solicitor-client privilege exemption

*Where an exemption requires proof that a record or information was provided or received in confidence:**

- Have you furnished details of the circumstances in which the record or information was provided or received?
- Have you provided evidence of the expectation of confidentiality and shown that this expectation was reasonable?

* e.g., the third party information exemption

*Where an exemption requires proof that a record is one of the types of records listed in the exemption or that it contains certain types of information:**

- Have you identified the particular type of record?
- Have you provided reasons why the record fits into this category?

* e.g., the Cabinet records and economic and other interests of Ontario exemptions

Where the personal information exemption is claimed:

- Have you identified which information in the record constitutes “personal information,” why this is so and to whom it relates?
- Have you considered whether the record contains the requester’s personal information? If so, consider the provisions of the *Act* granting a right of access to one’s own personal information and the related personal privacy exemption. In addition, consider the discretionary nature of this exemption. If not, consider the general personal privacy exemption.
- Have you considered and presented the facts and circumstances that are relevant in determining whether disclosure of this information would constitute an unjustified invasion of personal privacy?

Sharing of representations

- Have you explained which portions of the representations, if any, you would like withheld from other parties to the appeal?
- Have you explained which material you would like withheld from which parties?
- Have you provided detailed reasons for your request to have the Adjudicator withhold representations?

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