

Providing Records to the IPC During an Appeal

INTRODUCTION

1. The IPC requires Institutions to produce the records that are the subject of an Appeal with very limited exceptions. Under the Act, the Commissioner is entitled to the records at issue for the purposes of the Appeal, either by having them produced or, in exceptional circumstances at the discretion of the Commissioner, by examining them at the Institution.
2. The IPC can process Appeals most efficiently and effectively if the records are readily available at the IPC's offices. In most cases, records are pivotal to the entire appeal process. In Appeals streamed to Mediation, they are referred to frequently by the Mediator. These records assist the Mediator in identifying third parties, understanding any claimed exemptions or exclusions, attempting to narrow the issues, and providing advisory opinions to the Parties.
3. If the matter proceeds to Adjudication, the Adjudicator requires the records to determine whether they are responsive to the request, whether particular exemptions or exclusions apply, whether the records can be severed, and if any Affected Parties need to be notified.



PROCEDURE

4. Where the IPC determines that it requires access to the relevant records in an Appeal, the IPC will request them in writing in accordance with section 11 of the Code of Procedure. Generally, an Appeal where exemptions are claimed by an Institution will trigger a request for the records by Intake.
5. Where the IPC does not receive the records by the specified date, an IPC staff member may, with or without further notice to the Parties, issue an Order requiring the Institution to produce the records.

ON-SITE EXAMINATION

6. In exceptional circumstances at the discretion of the Commissioner, for example where an Institution's records are too fragile to survive physical transportation, photocopying, or scanning into a digital format, the IPC may agree to an on-site inspection of records at the Institution's location.

SENDING RECORDS

7. Institutions may send either the original record or a copy of the record to the IPC. Records should be sent electronically by secure link or by sending a secure digital device such as a USB storage key.
8. A well-organized records package is essential to the efficient and effective processing of an Appeal and can reduce the overall time it takes to complete the Appeal. A detailed index must be provided when requested, showing the name of each document, its creation date, whether it was disclosed in whole or in part or entirely withheld, and what exemption has been claimed for each withheld record or part. In addition, where a record has been disclosed in part, the Institution must provide a highlighted copy showing the severances to the IPC. Further guidelines for the records package are included in the attached checklist and sample record.
9. The IPC expects Institutions to submit records to the IPC by the deadline specified. Freedom of Information Coordinators should retain custody of the records for an appropriate period of time following the issuance of their decision, to take into account the possibility of appeals, before returning it to the program area of the Institution. In this way, if an Appeal is filed, the Coordinator has the record and can submit it promptly to the IPC without having to retrieve it from the program area.

SECURITY OF RECORDS

10. Records are subject to strict security while at the IPC. The IPC's security arrangements satisfy the security standards of the Ontario Provincial Police. Access to records is limited on a need-to-know basis. For high security records, the IPC has the ability to restrict access to records to certain IPC staff members only.

CONFIDENTIALITY OF RECORDS

11. The IPC is prohibited from disclosing any information that comes to its knowledge in the performance of its powers, duties, and functions.
12. The IPC never releases records at issue directly to a requester or an Affected Person. If, during the course of an Appeal, the Institution agrees to release a record, arrangements for the release will be made by the Institution, not the IPC. Similarly, where an IPC staff member orders that a record be disclosed, the obligation to disclose the record rests with the Institution.

RETURNING OR SHREDDING RECORDS

13. The IPC is prohibited from retaining any information obtained from a record. In the case of an Appeal settled through Mediation, the IPC's practice is to shred or destroy the records three (3) months after the settlement date. In the case of Appeals disposed of by Order, the IPC's practice is to shred or destroy the records one (1) year after the Order is issued.
14. If an Institution requires its records to be returned, the Institution should advise the IPC of this when they provide the records to the IPC or before the end of the three (3) month or one (1) year period, as applicable.
15. When the IPC returns records to an Institution, they will be returned in a secure manner that is mutually agreed to.

APPENDIX 1: CHECKLIST OF CRITICAL ELEMENTS FOR A WELL-ORGANIZED RECORDS PACKAGE

- Number the records.
- Number the pages of each record.
- Clearly indicate the claimed exemptions on each record.
- Where more than one exemption is claimed per record, or for a portion of a record, indicate the exemptions being claimed in the margin of each page.
- Ensure photocopies, digital copies, and scanned documents are legible and complete.
- Where larger than standard pages are being photocopied or digitized, ensure the appropriate size paper is used.
- Send only the records at issue in the Appeal (generally, those to which access has been denied in full or in part).
- Highlight severed portions of records in a way that leaves it legible for the IPC.
- When highlighting is not possible because an institution has already “blacked-out” a portion of the record, provide two sets of records, one with the blacked-out sections and one unsevered copy of the original.
- Attach an index to the records package showing the record number (where one is assigned), the name (or other description) of each document, its creation date, whether it was disclosed in whole or in part or entirely withheld, and what exemption has been claimed for each withheld record or part.

APPENDIX 2: EXAMPLE OF MARKED RECORD

Sample Record

Ultrasecure Detention Centre - Security Review

In order to do a complete review of the security features at Ultrasecure Detention Centre, a number of areas were canvassed. In addition to taking a tour of the facility and noting the various security features that currently exist, I also reviewed the policy and procedural manual, all incident reports for the years 1998-1999 and maintenance records for the years 1998-1999.

The policy and procedures manual section on security is current and comprehensive in terms of the existing security features. My review of the incident reports for the years 1998-1999 supports the view that the incidents which have occurred have not resulted in security breaches.

It is the maintenance records that signal the greatest area of concern. For the period 1998-1999 there were a total of 100 service requisitions relating to security features.

In particular, the fence alarm, the release mechanisms on door models APX-205 and the five hidden cameras in Area C repeatedly malfunctioned and had to be repaired a total of 63 times at a total expenditure of \$350,000. 14(1)(j), 14(1)(k)

In view of the above, it is my recommendation that we allocate \$750,000 to replace the existing fence alarm, release mechanisms and hidden cameras with the upgraded 1999 models. I make this recommendation because these particular security features are mandatory and not upgrading them would jeopardize the future security of the Ultrasecure Detention Centre. 13(1)

A.R.O. Smith
Security Manager
Ultrasecure Detention Centre