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Practice *Direction*

Providing records to the IPC during an appeal

Introduction

1. During an appeal, IPC staff usually require access to the records that are the subject of the appeal. Under the *Act*, the Commissioner is entitled to access to the records at issue, either by having them produced or by examining them at the institution.
2. The IPC can process appeals most 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 the Mediation stage, they are referred to frequently by the Mediator.
3. If the matter proceeds to the Adjudication stage, the Adjudicator reviews the records to determine whether they are responsive to the request, whether particular exemptions or exclusions apply, and whether the records can be severed.

Procedure

4. Where the IPC determines that it requires access to the relevant records in an appeal, the IPC will request them in writing, specifying the date by which the institution must send them to the IPC. Where asked to do so, the IPC may grant a brief extension of the time for submitting

records, if the institution provides reasonable justification.

5. Where the IPC does not receive the records by the specified date, an Adjudicator may, without further notice to the parties, issue an order requiring the institution to produce the records.

Special types of records

6. If legal advice is contained in a particular record, an institution may be concerned that by providing the record to the IPC it may be waiving solicitor-client privilege. This is not the case. The *Act* provides the Commissioner with authority to obtain and examine a record, despite any legal privilege, and institutions do not waive solicitor-client privilege by sending records of this nature to the IPC. The same reasoning applies where the confidentiality provisions contained in other statutes are at issue.

On-site examination

7. In special circumstances, for example where an institution's records are highly voluminous or too fragile to survive physical transportation or photocopying, the IPC may agree to an on-site inspection of records.

Sending records

8. Institutions may send either the original record or a copy of the record to the IPC. Records are usually sent to the IPC by bonded courier.
9. A well-organized records package is essential to the quick and efficient processing of an appeal, and can reduce the overall time it takes to complete the appeal. In particular, a detailed index should be provided, 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 should provide either a highlighted copy showing the severances, or a copy of both the severed and unsevered version, to the IPC. Further guidelines for the records package are included in the attached checklist and sample record.
10. When an institution has decided not to release a record, the Freedom of Information and Privacy Co-ordinator should retain custody of the record for at least 60 days following the decision before returning it to the program area of the institution. In this way, if an appeal is filed, the Co-ordinator has the record and can submit it promptly to the IPC without having to retrieve it from the program area.

Security of records

11. Records are subject to strict security while at the IPC. The IPC's security arrangements

satisfy the security standards of the Ontario Provincial Police.

Confidentiality of records

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

Returning or shredding records

14. 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 the records three months after the settlement date. In the case of appeals disposed of by order, the IPC's practice is to shred the records one year after the order was issued.
15. If an institution requires its records to be returned, the institution should advise the IPC before the end of the three-month or one-year period.
16. When the IPC returns records to an institution, they are either hand-delivered by an IPC staff member or sent by a bonded courier, depending on the location of the institution.

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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 are legible and complete;
- Where larger than standard pages are being photocopied, 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.

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