

Direction to Institutions When Making Representations

PRACTICE DIRECTION #5

INTRODUCTION

1. 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. This Practice Direction is intended to inform Institutions on how to assess the issues in an Appeal and the topics to cover in their Representations.

CONSIDERATIONS FOR REPRESENTATIONS

2. For every exemption claimed:
 - Clearly identify the record or part at issue.
 - Identify the exemptions that apply to each part of the record which has been withheld from disclosure.
 - Review the Notice of Inquiry which the Adjudicator has provided to your Institution for guidance.
 - Address each of the issues and/or answer each of the questions set out in the Notice of Inquiry.
 - Review previous Orders or relevant [Interpretation Bulletins](#) to determine how the exemption has been interpreted in the past.



3. Where an exemption is discretionary:
 - Consider whether the Institution should rely on this exemption in the particular circumstances of the Appeal.
 - If the Institution intends to rely on this exemption, explain the basis for the head's exercise of discretion to withhold the record.
4. Where an exemption requires proof that a particular consequence would result from disclosure of a record (e.g., prejudice to a third party's commercial interests or danger to safety or health exemptions):
 - Identify the consequence in detail.
 - Provide detailed evidence establishing a reasonable expectation of the harm described in the exemption.
5. Where an exemption requires proof that a record was prepared for a particular purpose (e.g., the solicitor-client privilege exemption):
 - Provide facts to support your claim.
 - Identify the facts which apply to each component of the exemption.
6. Where an exemption requires proof that a record or information was provided or received in confidence (e.g., the third party information exemption):
 - Furnish details of the circumstances in which the record or information was provided or received.
 - Provide evidence of the expectation of confidentiality and explain how this expectation was reasonable.
7. 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 (e.g., the Cabinet records and economic and other interests exemptions):
 - Identify the particular type of record.
 - Provide reasons why the record fits into this category.

8. Where the personal information exemption is claimed:
- Identify which information in the record constitutes “personal information,” and describe why this is so and to whom it relates.
 - If the record contains the requester’s personal information, consider the provisions of the Act granting a right of access to the individual’s own personal information and the related personal privacy exemption. In addition, consider the discretionary nature of this exemption.
 - If the record does not contain the requester’s personal information, consider the general personal privacy exemption.
 - Consider and present the facts and circumstances that are relevant in determining whether disclosure of this information would constitute an unjustified invasion of personal privacy.
9. Sharing of Representations:
- Please see [Practice Direction Number 7](#).

For further information on understanding the application of exemptions and preparing Representations, please see the IPC’s [Interpretation Bulletins](#).