

# Exchange of submissions and procedural fairness

## External guide for parties

The *Freedom of Information Act 1992* (WA) requires that the Information Commissioner (**the Commissioner**) ensure that parties to an external review are given a reasonable opportunity to make submissions to her.<sup>1</sup>

It is not the Commissioner's usual practice to provide each party with a complete copy of each other's submissions. Where it is considered appropriate, the Commissioner may provide details of any submissions received to the other parties to an external review.

The guiding principle in deciding what details are relevant for the Commissioner to give to the other party is **procedural fairness**. Procedural fairness requires the Commissioner to ensure that a party who will be affected by her decision is given a meaningful opportunity to be heard before a decision is made.

However, procedural fairness does not require the Commissioner to give the parties copies of **all** material and submissions given to her during the external review process. Rather, it requires the Commissioner to inform a party who will be affected by her decision of the **nature and content** of any material that is adverse to their interests that is credible, relevant and significant to the decision to be made.<sup>2</sup> That description will not include information that is claimed to be exempt, as the Commissioner is not permitted to disclose this information.<sup>3</sup>

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<sup>1</sup> Section [70](#)(3)

<sup>2</sup> For further information, see the Supreme Court's decision in *Lee v Department of Health* [\[2020\] WASC 103](#), at [46]-[50] and [62]-[75]

<sup>3</sup> Sections [74](#)(1) and (2)



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