



Exchange of submissions and procedural fairness

External review 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.¹

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.²

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.³ That description will not include information that is claimed to be exempt, as the Commissioner is not permitted to disclose this information.⁴

¹ Section [70\(3\)](#)

² See 2.11 of the OIC's [External Review Procedure – Guide for parties](#)

³ For further information, see the Supreme Court's decision in *Lee v Department of Health* [\[2020\] WASC 103](#), at [46]-[50] and [62]-[75]

⁴ Sections [74\(1\)](#) and (2)