



Environmental Appeal Board

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Requesting an Order for Documents to be Disclosed

The Board's [Rules](#) say that each party must share the documents that they will be relying upon in a hearing. The documents must be shared with the Board and with the other parties, participants, and interveners in the appeal.

If there is an oral hearing, the documents are shared before the hearing with the Statement of Points ([Rule 19](#)). In a written hearing, the documents are shared with the written submissions ([Rule 20](#)).

The Board has deadlines for the exchange of documents. The deadlines are generally set as discussed in [Rules 19](#) and [20](#), but the Board can set different deadlines in an appeal.

To ensure the appeal proceeds fairly and efficiently, the Board asks parties, participants, or interveners to co-operatively share relevant documents as early as possible. This is especially true for the documents that the decision-maker used to reach the decision under appeal. These documents are called the “record” of the decision, and might include reports, letters, laws, regulations, policies, guidelines, and other documents.

What if I need a document from someone else?

You are responsible for gathering the documents and other evidence you will need to make your case. If someone else has a document you need, you need to write them and ask them to give you a copy of the document.

What if the person refuses to give me a document that I need?

According to [section 93.1 of the Environmental Management Act](#) and [section 34\(3\)\(b\) of the Administrative Tribunals Act](#), the Board can order someone to produce “a document or other thing” in some circumstances. To make such an order, the Board must conclude that the item in question is in the person’s possession or control, is admissible in the hearing, and is relevant to an issue in the appeal.

How do I request an Order?

According to [Rule 16](#), you must apply in writing, for this order and include the required information. An application must include:

- the name of the person you want to give you documents or things;
- a description of the documents or things, so that a reasonable person could know what you want;
- the reasons why the documents or things are relevant to an issue in the appeal; and
- what you have done to get the person to give you the documents or things. The Board will only grant your request if you have first asked the person to voluntarily give you the documents or things.

If the Board wants more information, it may ask you to provide it.

When deciding to grant your request, the Board will consider whether the documents or things meet the three requirements: that they are in the named person's possession or control; that they are admissible in the hearing; and that they are relevant to an issue in the appeal. The Board may also consider other factors as well, such as whether the documents or things were made in an attempt to settle issues under appeal. The Board must not require such documents or things to be disclosed. See [section 10.0 of the Practice and Procedure Manual](#) for more information on requesting an order for production of a document or other thing.

If the Board grants your application and orders the production of documents or other things, **you will be responsible for serving it on the person named in the order.**

Objecting to an Order

A person named in an order can ask the Board to cancel or change the order. They can do so before or during the hearing. If they convince the Board that the documents are not in their possession or control, are not admissible in the appeal, or are not relevant to the appeal, the Board may cancel or vary the order. Before it does so, it will give all parties a chance to address the person's request.