

47. Access to Records and Information

Apr-22

The policy guideline is intended to guide Residential Tenancy Branch (RTB) employees and parties to a dispute resolution proceeding when dealing with requests for access to records. This policy guideline may be revised and new Guidelines issued from time to time.

This guideline sets out the Residential Tenancy Branch (RTB) policy regarding access to dispute resolution proceeding records and information about disputes: who can access those records and what information the RTB can make available to the parties to a dispute resolution proceeding.

A. LEGISLATIVE FRAMEWORK

In British Columbia, a citizen's information and privacy rights are protected by law. The right to request records and the protection of personal information is laid out in two pieces of legislation: the *Freedom of Information and Protection of Privacy Act* (FOIPPA), which applies to more than 2,900 public bodies, such as the RTB, and the *Personal Information Protection Act* (PIPA), which applies to more than 300,000 private organizations. An "organization" subject to PIPA includes an individual involved in a commercial activity, such as a landlord.

FOIPPA gives the public the right to request any records in the custody or control of a public body (subject to some exceptions), and gives individuals the right to access records that contain their own personal information. PIPA gives an individual the right to request access to their own personal information in the custody or control of a private organization.

Under FOIPPA, a person's right to access personal information is generally limited to information about themselves; however, in some instances, a person may be able to access personal information about a third party. If a person makes a request for access to records under FOIPPA, a public body must refuse to disclose personal information about a third party if the disclosure would be an unreasonable invasion of the third party's privacy. A "third party" is any person, group of persons or organization other than the person who made the access request or a public body.

Even when there has not been a request for access to records, public bodies may only disclose personal information in accordance with FOIPPA.

However, with very limited exceptions, FOIPPA does not apply to the following records within the control of the director of RTB:¹

¹ *Residential Tenancy Act*, section 5.1 and *Manufactured Home Park Tenancy Act*, section 5.1 which establish that section 61 of the *Administrative Tribunals Act* applies to the director as if the director were a tribunal and to dispute resolution proceedings, reviews and the imposition and review of administrative penalties.

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- (a) a personal note, communication or draft decision of a decision maker;
 - (b) notes or records kept by a person appointed by the director to conduct a facilitated settlement process in relation to an application;
 - (c) any information received by the director or the director's delegate in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
 - (d) a transcription or tape recording of a tribunal proceeding;
 - (e) a document submitted in a hearing for which public access is provided by RTB; and
 - (f) a decision of RTB for which public access is provided by RTB.

The RTB is committed to ensuring appropriate access to information without a formal Freedom of Information request where possible. To support this commitment, the RTB will make reasonable efforts to provide information regarding a file a party is involved in when RTB receives a request from a party.

The RTB will not provide members of the public or persons who are not parties to a dispute with access to files or records. Persons seeking another person's recorded personal information may submit a formal request through Information Access Operations, attaching either proof of authority to act on that person's behalf or the person's signed consent for disclosure. For more information, refer to the [Freedom of Information website](#).

Exception: A public body (such as RTB) may disclose personal information in its custody or under its control as permitted under section 33 of FOIPPA. This may include requests from law enforcement agencies or other public bodies (e.g. Office of the Superintendent of Real Estate). Such a request must:

- Be made in writing, specifying the requested information and authority for the request, including the relevant provision(s) of FOIPPA under which they say the RTB can disclose the personal information to them; and
- Include the police file number, if there is one.

If applicable, a copy of any subpoena, warrant or order issued or made by a court or person in Canada with jurisdiction to compel the production of information must also be provided.

RTB's contact information can be found [here](#).

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B. Personal Information

Personal information is defined in FOIPPA as recorded information about an identifiable individual other than contact information. In PIPA it is defined as personal information about an identifiable individual and also does not include contact information. Personal information includes information that can be used to identify an individual through association or inference.

Personal information includes, but is not limited to:

- Name, age, sex, weight, height
- Home address and phone number
- Race, ethnic origin, sexual orientation
- Medical information
- Health care history, including physical or mental disability
- Number or symbol assigned to the individual
- Income, purchases and spending habits
- Blood type, DNA code, fingerprints
- Marital or family status
- Religion
- Education
- Financial information
- Criminal information
- Employment information
- Personal views or opinions

C. Application of this Policy

1. This policy applies to all RTB records linked to an RTB application for dispute resolution, regardless of the method by which the information was recorded or the medium on which it is stored.
2. This policy applies only to records that are in the custody or control of the RTB and does not apply to records in the custody or control of a party or witness.
3. This policy does not apply to a personal note, communication or draft decision made by the director or the director's delegates in the course of adjudicating a dispute.² An example of this is notes made by an arbitrator during the course of a hearing.
4. This policy does not apply to any information received by the director or the director's delegates during a hearing or part of a hearing from which the public, a party or an intervenor were excluded.³ This means information received in support of applications for review consideration will only be

² Pursuant to s. 61(2)(a) of the *Administrative Tribunals Act*, FOIPPA does not apply to these records.

³ Pursuant to s. 61(2)(c) of the *Administrative Tribunals Act*, FOIPPA does not apply to these records.

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released upon request to the party who submitted the information. The RTB may provide it to the other party where procedural fairness requires it be disclosed. Despite section 61(2)(c) of the *Administrative Tribunals Act*, information received in support of a direct request is accessible to all parties.

5. This policy applies to all RTB records linked to an RTB application for dispute resolution, regardless of the status of the file at the time the request is made.
6. This policy applies only to parties involved in a dispute resolution proceeding, who make a request for RTB records, and/or their lawyers or advocates.
7. Unless a lawyer, advocate, agent or other authorized representative of a party is noted on the application for dispute resolution, they must provide a written authorization from the party consenting to the release of their RTB records to the representative.

D. Access to records**Information that cannot be released**

With limited exceptions, RTB cannot release certain types of information to anyone other than the party who submitted it, such as:

- Information submitted in support of a fee waiver application;⁴
- Medical information submitted in support of an application other than the substantive application for dispute resolution, such as an application for an alternative method of hearing, to extend a time limit or to justify a review consideration application;⁵
- Information received in support of an application for review consideration,⁶ except where procedural fairness requires it be disclosed; and
- Personal information supplied to RTB in confidence, such as an address where there are domestic violence concerns, although the party must identify that it is being provided in confidence and the reason why.

Status of file not an impediment to providing access

Whether a file is active or concluded is not an impediment to providing information or copies of records to the parties. There may be operational reasons why access to an open file is unable to be accommodated at the time a request is made. If this is the case, the person requesting access to or copies of documents will be advised of an approximate time when the file is likely to be available or may be asked to make an appointment to view a file. If a person requesting access to or copies of documents requires them on an urgent basis, RTB will review the request to determine if special accommodation can be made.

⁴ Pursuant to s. 61(2)(c) of the *Administrative Tribunals Act*, FOIPPA does not apply to these records.

⁵ Pursuant to s. 61(2)(c) of the *Administrative Tribunals Act*, FOIPPA does not apply to these records.

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Giving out information over the phone

If a party requests specific information regarding their dispute resolution proceeding over the phone, RTB will take steps to validate the identity of the caller before releasing any personal information. Callers may be asked a number of questions regarding file information that they would be reasonably likely to know if they were a party to the file, such as the file number and access code. If RTB is not able to confirm a caller's identity to their satisfaction, personal information will not be released.

Requests from a landlord or tenant to search the database to determine if there is an dispute resolution application against them will be accommodated, but information about any dispute resolution proceedings will only be released if RTB is able to validate the caller's identity. Such a request will only reflect the information in the system at the time of the search.

General inquiries about the number of disputes a person may be involved in, the nature of those disputes or other personal information will not be released by RTB.

Telephone calls to the RTB for information are recorded for quality assurance and training purposes only. All recordings of telephone calls seeking information are considered transitory records and are automatically deleted within 90 days. Recordings or transcripts of these telephone calls will not be released by RTB except in exceptional circumstances.

Obtaining a recording of a dispute resolution hearing

The RTB teleconference system will record audio for all dispute resolution hearings. Under the Rules of Procedure, persons are prohibited from making their own recordings and doing so may result in administrative monetary penalties being imposed.

The RTB's recordings will become a part of the dispute resolution file. Recordings may be used for quality assurance and training purposes.

Parties (or their authorized representatives) may request access to a recording of their proceedings by submitting a Request for a Recording Hearing form to the RTB. Due to practical and operational limitations, unless there are extraordinary circumstances, a party may only request a recording 20 days after the arbitrator concludes the dispute resolution hearing. The fact that a party intends to apply for review consideration, clarification, correction is not considered an extraordinary circumstance.

A person who is given access to a recording must not alter, copy, distribute, or publish the recording unless authorized in writing by the director of the RTB.

A person given access to a recording must comply with any order made by the director of the RTB relating to the use of the recording. Failure to comply with an order may result in administrative monetary penalties being imposed.

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Requests for documents from file

RTB is a neutral public body that has custody and control of dispute resolution proceeding files. Parties are responsible for service of documents on other parties and the RTB as set out in the RTA and MHPTA, the Rules of Procedure and policy guidelines. A party to a file may make a written request for any documents or evidence from a dispute resolution proceeding file they are a party to, at any time during the dispute resolution process, by setting out the documents they are requesting and who submitted them. RTB will provide one copy of the requested information.

This does not relieve parties of their responsibility to serve documents and evidence in accordance with the legislation. If a party raises an issue with service of documents at a dispute resolution hearing, the arbitrator will deal with that procedural issue. Multiple requests for the same information will be reviewed and may be declined if determined to be an abuse of process.

Requests to remove documents from a file

Once documents or evidence are submitted to RTB, they will not be returned to parties. Prior to submitting materials to RTB, parties must ensure they have sufficient copies of their documents and evidence for themselves and to serve on the other parties to the dispute resolution proceeding. If submitting evidence to RTB electronically, parties will retain and can make copies from the originals of their evidence.

Requests to view a file

If a party requests access to a physical dispute resolution file that they are a party to, they must attend at the Burnaby office and will be required to verify their identity. RTB will review the file and remove any documents that the party is not permitted view prior to allowing the party to view the file. If documents or evidence have been uploaded to RTB electronically, a party may attend at the RTB office or any Service BC office and, upon providing sufficient proof of identity, RTB or Service BC will print out the requested documents for the party to view or retain, if resources permit.

If a party is unable to attend the RTB office or a Service BC office, or if the documents requested are not in electronic format, then RTB will, upon being satisfied of the identity of the person requesting the documents and after ensuring that any documents that are not permitted to be accessed by the party have been excluded, mail a copy of the requested documents to the party.

E. Changes to Policy Guideline

Section	Change	Notes	Effective Date
All	New	New policy guideline	25-Oct-2017
D	New	Reference to recording of information services calls	25-Feb-2019

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All	Am	Policy guideline updated generally	25-April-2022
D	New	Reference to recording of dispute resolution proceedings	25-April-2022