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## BC Farm Industry Review Board

July 21, 2021

File: 44200-60\BHEC CMB

### Delivered by email

Craig Evans  
Executive Director and Pricing Liaison  
Primary Poultry Processors' Association of BC

Dear Mr. Evans:

### **CONFIDENTIALITY AND COMPETITIVENESS – CHICKEN SECTOR PRICING SUPERVISORY REVIEW**

Thank you for your letter of July 19, 2021 regarding the publication of submissions provided to the BC Chicken Marketing Board (Chicken Board), the BC Broiler Hatching Egg Commission (Commission) and the BC Farm Industry Review Board (BCFIRB) by the Primary Poultry Processors' Association of BC (PPPABC).

In your letter, you note *“that a number of stakeholder submissions that contain, what we would see as, “industry sensitive” information is being posted to websites in the public domain....The PPPABC considers industry sensitive information to be anything that provides industry data, information, or strategies that could be used by other industry participants to compromise or displace BC’s poultry business.”*

BCFIRB understands this concern and believes that processes are in place that would enable the PPPABC, and other stakeholders, to work with the Chicken Board, Commission and BCFIRB to identify and protect confidential or private information that could reveal commercial or financial information, where that disclosure would significantly harm the competitive or negotiating position of a third party.

Under the Freedom of Information and Privacy Act (FOIPPA), the Chicken Board and the Commission, as public bodies, have an obligation to refuse to disclose information that reveals commercial or financial information of a third party, supplied, implicitly or explicitly, in confidence, and where the disclosure would significantly harm the competitive or negotiating position of a third party. Should the PPPABC believe they are submitting information to the Chicken Board or Commission, where the disclosure would significantly harm the competitive or negotiating position of a third party, they should identify that at the same time as the information is provided. The Chicken Board and Commission can then assess the information from that perspective along with potential harms, and make decisions accordingly.

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**Web:**

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I understand Wendy Holm, BCFIRB Liaison, discussed with you yesterday an operational change being made to the Chicken Board and Commission joint review website to create a restricted, password-protected page where documents for sharing with Stakeholders but not the general public may be posted, subject to Chicken Board and Commission decisions around disclosure of potentially sensitive information.

As you will recall, BCFIRB sent out a Supervisory Rule on May 22, 2020, regarding Protection of Privacy and Confidentiality in BCFIRB Supervisory Processes and Reviews. I have attached that document again for reference.

In summary, BCFIRB, when exercising its supervisory capacity, has the discretion at common law to receive information in confidence. Where information is received in confidence in a supervisory hearing, the *Freedom of Information and Protection of Privacy Act (FOIPPA)* does not apply because the information received is protected from disclosure pursuant to section 61(2)(c) of the *Administrative Tribunals Act (ATA)*. A hearing is broadly defined by BCFIRB as any process where a party is given an opportunity to provide information, in oral or written submission format.

While BCFIRB strives to ensure that its processes are open and accessible, there will be situations where BCFIRB determines that certain information should be received in confidence and/or participants wish to rely on confidential or sensitive information (e.g., financial information that could harm the competitive or negotiating position of a third party), which they seek to protect in order to participate in a meaningful and effective manner.

With this in mind, I encourage the PPPABC to proactively identify any information it may submit or provide to BCFIRB, that it believes is confidential or sensitive and why. BCFIRB will then assess the information to determine if non-disclosure is consistent with the proper administration of justice. As noted in the May 2020 Supervisory Rule, BCFIRB would take into consideration the following types of factors in making a decision around non-disclosure of submitted information:

- What is the importance of the individual's interest at stake?
- Is the order necessary to prevent a serious risk to that important interest, including a commercial interest, grounded in evidence?
- What is the impact on that protected interest by disclosure?
- Is there a public interest in maintaining confidentiality?
- Are there reasonable alternatives available to such an order or can the order be restricted as much as is reasonably possible while still preserving the commercial interest in question?

I trust that this information will be of assistance moving forward in the latter upcoming phases of this review.

Regards,



Kirsten Pedersen  
Executive Director

cc: Harvey Sasaki  
Chair  
BC Chicken Marketing Board

Bill Vanderspek  
Executive Director and Pricing Liaison  
BC Chicken Marketing Board

Jim Collins  
Chair  
BC Broiler Hatching Egg Commission

Stephanie Nelson  
Executive Director and Pricing Liaison  
BC Broiler Hatching Egg Commission

Jennifer Curtis  
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BC Chicken Growers' Association

Art Deruiter  
Executive Director and Pricing Liaison  
BC Broiler Hatching Egg Producers' Association

Ernie Silveri  
President and Pricing Liaison  
BC Egg Hatchery Association

Wendy Holm  
BCFIRB Pricing Liaison

BCFIRB web site