

## 47. Access to Records and Information

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*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.*

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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 Residential Tenancy Branch, and the *Personal Information Protection Act* (PIPA), which applies to more than 300,000 private organizations. The definition of 'organization' in PIPA includes an individual.

FOIPPA gives a citizen the right to request any records in the custody or control of a public body (subject to some exceptions), including those that contain their own personal information. PIPA gives a citizen the right to request access only to their own personal information in the custody or control of a private sector organization.

A person's right to access personal information is generally limited to only information about themselves, however, in some instances, a person may be able to access personal information about a third party. Access to information about others is only permitted when disclosing that personal information would not be considered an unreasonable invasion of a third party's privacy. Public bodies may only disclose personal information in accordance with the *Freedom of Information and Protection of Privacy Act*.

The *Freedom of Information and Protection of Privacy Act* does not apply to the following records within the control of the director of RTB:<sup>1</sup>

- (a) a personal note, communication or draft decision of a decision maker;
- (b) notes or records kept by a person appointed by the tribunal to conduct a facilitated settlement process in relation to an application;

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<sup>1</sup> *Residential Tenancy Act*, section 78.1 and *Manufactured Home Park Tenancy Act*, s. 71.1 which establish that section 61 of the *Administrative Tribunals Act* applies to the director as if the director were a tribunal.

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- (c) any information received by the tribunal 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 the tribunal; and
  - (f) a decision of the tribunal for which public access is provided by the tribunal.

The RTB is committed to ensuring appropriate citizen 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 a request is made or received.

**The RTB will not provide access to files or records to members of the public or people who are not parties to a dispute.** Persons requesting 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 control as permitted under s. 33 of the *Freedom of Information and Protection of Privacy Act*. 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; and
- Include the police file number, if there is one.

A copy of any subpoena, warrant or court order, if applicable, must also be provided.

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

## B. Definitions

**Personal information** is defined in FOIPPA as recorded information about an identifiable individual other than contact information. Personal information includes information that can be used to identify an individual through association or inference.

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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

**Third party**, in relation to a request for access to a record, means any person, group of persons or organization other than:

- (a) the person who made the request, or
- (b) a public body.

### C. Application of this Policy

1. This policy applies to all RTB records linked to an RTB dispute, 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 designates in the course of adjudicating a dispute.<sup>2</sup> 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 tribunal in a hearing or part of a hearing from which the public, a party or an intervenor were excluded.<sup>3</sup> This means information received in support of applications for review consideration will only be released to the party who submitted the

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<sup>2</sup> Pursuant to s. 61 (2)(a) of the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act* does not apply.

<sup>3</sup> Pursuant to s. 61 (2)(c) of the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act* does not apply.

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information, if requested. Despite s. 61 (2)(c) of the *Administrative Tribunals Act*, information received in support of a direct request is accessible to the parties.

5. This policy applies to all RTB records linked to a RTB dispute, regardless of the status of the file at the time the request is made. There may be operational reasons why access to an open file is unable to be accommodated at the time a request is made. The person requesting access or a copy of documents will be advised of an approximate time when the file may be available or may be asked to make an appointment to view a file.
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 dispute resolution application, they must provide a written authorization from the party, consenting to the release of their RTB records to the representative.
8. If a party requests specific information regarding their dispute resolution proceeding over the telephone, RTB will ask a number of questions regarding the file to validate that the caller is a party to the proceeding. In the event the RTB is unable to confirm the identity of the caller to their satisfaction, specific information regarding a file will not be released.

#### D. Access to records

##### Information that cannot be released

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;<sup>4</sup>
- Medical information submitted in support of an application, such as for an alternative method of hearing, to extend a time limit or justify a review application;<sup>5</sup>
- Information received in support of an application for review consideration;<sup>6</sup> and
- Personal information supplied to RTB in confidence, such as an address where there are domestic violence concerns.

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<sup>4</sup> Pursuant to s. 61 (2)(c) of the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act* does not apply.

<sup>5</sup> Pursuant to s. 61 (2)(c) of the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act* does not apply.

<sup>6</sup> Pursuant to s. 61 (2)(c) of the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act* does not apply.

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**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 or copies of documents is to be advised of when the file is likely to be available. If a person requesting access or copies of documents requires them on an urgent basis, RTB will review the request to determine if special accommodation can be made.

**Giving out information over the phone**

Requests for information over the phone require RTB to validate the identity of the caller before releasing any personal information. Callers may be asked a number of questions regarding file information, including the file number and access code that the caller would be reasonably likely to know if they were a party to the file. If RTB is not able to verify a caller's identity, personal information will not be released.

Requests from a landlord or tenant to search the database to determine if there is an action 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. Parties should be aware that such a request only reflects 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.

**Requests for documents from file**

RTB is a neutral body that has custody and control of dispute resolution proceeding files. Parties are responsible for service of documents as set out in the RTA and MHPTA, 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 party to, at any time during the dispute resolution process, 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 from 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, an arbitrator may deal with the matter. 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. Parties must ensure they have sufficient copies of their documents and evidence for themselves and to serve to the parties to the dispute resolution proceeding prior to filing

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with RTB. With the move to electronically submitted evidence, parties will retain the originals of their evidence and can make copies from those documents.

**Requests to view a file**

If a party requests access to a physical file that they are a party to, they must attend at the Burnaby office to do so and will be required to verify their identity. RTB will review the file and remove any documents that are not permitted to be viewed by a party 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 RTB or a Service BC office, or if the documents requested are not in electronic format, RTB will, upon being satisfied about the identity of the person requesting the document and after ensuring that any documents that are not permitted to be accessed by the party are excluded, mail a copy of the requested document(s).

**E. Changes to Policy Guideline**

<b>Section</b>	<b>Change</b>	<b>Notes</b>	<b>Effective Date</b>
All	New	New policy guideline	25-Oct-2017