

## **SCHEDULE “K” - ACCESS AND PRIVACY CODE**

### **Purpose**

Pursuant to the MOU, this Code establishes policy and practices regarding information in the custody and control of the Technical Standards and Safety Authority (TSSA), including:

- access to information collected by TSSA in the administration of its authority, including personal information;
- the protection of personal information, including the protection of personal information of TSSA employees;
- the collection, use and disclosure of personal and other information by TSSA in the administration of its authority; and
- effective and timely procedural remedies concerning the handling of personal and other information collected by TSSA in the administration of its authority.

### **Application – Regulatory Activity**

This Code applies to information and personal information collected, used or disclosed by TSSA in the course of TSSA’s administration of the Act.

### **Definitions**

In this Code:

*access* means access by an individual or an organization to a record of information in the custody of TSSA and under the control of TSSA.

*Act* means the legislation pursuant to the *Technical Standards and Safety Act, 2000* and the regulations under that Act, as amended from time to time.

*administration of the Act* means the regulatory responsibilities assigned under the Act and includes any activity related to an obligation under the Memorandum of Understanding.

*bulk data* means records requested in bulk or selective form that do not contain personal information and may have commercial value.

*Enforcement activity* includes investigation or law enforcement proceedings of TSSA or other provincial and federal enforcement bodies.

*MOU* means Memorandum of Understanding as entered into as stipulated by the *Technical Standards and Safety Act, 2000*.

*personal information* means a record of information about an identifiable individual, but does not include the name, title, business address or telephone.

*public information* means information other than personal information that TSSA determines is necessary to make available to the public in order to carry out its administration of the Act.

*record* means any record of personal information, however recorded, in the custody and under the control of TSSA as a result of commercial activity of TSSA, but does not include information related to a specific installation location or incident.

TSSA means the Technical Standards and Safety Authority, a corporation without share capital established under section 3.1 of the *Technical Standards and Safety Act, 2000* as amended.

## **1. Accountability**

**1.1** TSSA is responsible for all information in its custody and under its control. TSSA shall designate an individual or individuals who are accountable for compliance with this Code. The identity of the designated individual or individuals shall be made known upon request. The ongoing collection and processing of information may be the responsibility of other individuals within TSSA.

**1.2** TSSA shall take reasonable steps to ensure that the personal information in its custody and under its control is accurate, complete and as up-to-date as is necessary for the purposes for which it is to be used. Where an individual provides TSSA with an amendment to his or her personal information, it shall be recorded by TSSA as soon as practically possible. Where third parties have access to the information in question, TSSA shall, when appropriate, transmit amended information to those third parties.

## **2. Access**

**2.1** Subject to the exceptions set out in section 3, every person has a right of access to his or her own personal information and to public information in the custody and control of TSSA.

### **2.2 Access Requirements and Procedure – Public Information**

**2.2.1** TSSA shall ensure that the public has ready access to public information. The information shall be available in various mediums for review and, where practicable, be posted on TSSA's website. TSSA's information materials, including its website, shall provide instructions on how the public can contact TSSA to obtain access to public information.

**2.2.2** TSSA shall support access to information by disseminating public information relevant to public safety and as is required for its administration of the Act.

## **2.3 Access Requirements and Procedure – Personal Information**

**2.3.1** Within 30 days of receipt of a written request for personal information, TSSA shall advise an individual regarding the existence, use and disclosure of his or her personal information and, subject to the exceptions set out in section 3, provide the individual with access to his or her personal information in a generally comprehensible form.

**2.3.2** The written request should include sufficient information to allow TSSA to identify the requester and his or her personal information. TSSA may prescribe the form such a request should take.

**2.3.3** Where access is refused, TSSA shall provide written reasons for the refusal to the requester, if the request has been made in writing. The requester may file a complaint with TSSA concerning the access refusal, pursuant to section 7.1.

**2.3.4** Before proceeding with any access request, TSSA shall provide the requester with the approximate cost, if any, of responding to the request, and then confirm whether the requester still wishes to proceed with the access request, or whether the request is to be withdrawn.

**2.3.5** Where third parties have access to personal information on an ongoing basis in accordance with section 5.2(b), any amendments to such information shall be provided to the third parties.

## **3. Exceptions to Access**

### **3.1 Mandatory Exception**

Subject to sections 3.4 and 3.5, TSSA shall refuse a person access to a record where the record or part of the record would likely reveal personal information about another person, unless the other person consents to the access.

### **3.2 Discretionary Exceptions**

Subject to sections 3.4 and 3.5, TSSA may refuse access to a record where giving access to the record or part of the record,

- (a) violates solicitor-client privilege;
- (b) violates a legally recognized privilege other than solicitor-client privilege;
- (c) may compromise an ongoing investigation or enforcement activity;
- (d) contains bulk data, or contains aggregate accident data or other sensitive aggregate data;
- (e) provides access to information that is the substance of deliberations by one or more of the following: TSSA's Board of Directors, TSSA

Committees, including Management Committees, Board Committees, Advisory Councils and Risk Reduction Groups or other like committees established by TSSA. The information may include, but is not restricted to: agenda, minutes, policy options and analysis, advice from staff or an external consultant, and advice to government;

(f) reveals confidential commercial, scientific, proprietary, technical, financial or labour relations information, if access to this information may result in undue loss or gain, prejudice a competitive position or interfere with contractual or other negotiations;

(g) reveals advice, recommendations or information provided by a TSSA inspector, engineer, manager or other employee in the course of his or her employment;

(h) provides access to information generated in the course of a formal dispute resolution process;

(i) is a report prepared in the course of law enforcement, an inspection or an investigation;

(j) provides access to information collected without knowledge or consent and for purposes related to an investigation as permitted by the exception under section 4.5;

(k) may be refused under subsection 14 (1) of the *Freedom of Information and Protection of Privacy Act*;

(l) is not in the public interest or could reasonably be expected to threaten the life, health or security of an individual;

(m) is information compiled by TSSA or supplied to TSSA for the purposes of risk management or risk informed decision making;

(n) is a report supplied by a regulatory enforcement body to TSSA in confidence; or

(o) violates a provision of the Act.

**3.3** Despite sections 3.1 and 3.2, TSSA may release a record where not releasing the record would threaten an individual's life, health or security.

**3.4** Where information that is exempted from an access request can be reasonably severed from that part of the record to which the requester can be given access, TSSA shall sever the exempted information and provide the requester with access to the remaining part of the record.

**3.5** Section 3.4 does not apply where the record,

- (a) is protected by solicitor-client privilege;
- (b) was generated in the course of a formal dispute resolution process; or
- (c) was collected without knowledge or consent for purposes related to an investigation as permitted by the exception under section 4.5; or
- (d) is a report prepared in the course of law enforcement, an inspection or an investigation.

#### **4. Collection of Personal Information**

**4.1** Collection of personal information shall be limited to that which is necessary for the carrying out of TSSA's administration of the Act or a consistent purpose.

**4.2** Subject to the exception set out in section 4.5, where TSSA collects personal information, it shall,

- (a) only collect personal information directly from the individual to whom the information relates, unless the individual authorizes another manner of collection; and
- (b) explain to the individual the purpose for collecting the personal information and, at or before the time of collection, obtain his or her the consent for its collection, use and disclosure by TSSA for that purpose.

**4.3** TSSA shall document the purpose for which personal information is collected and TSSA shall specify whether the personal information is being collected for the purpose of administration of the Act by TSSA.

**4.4** Where TSSA wishes to use personal information for a purpose other than that for which consent has been granted, TSSA shall obtain consent to do so from the individual and document the new purpose.

#### **4.5 Exceptions**

Where personal information is collected for the purposes of the administration of the Act by TSSA, TSSA may collect the information without the knowledge or consent of the individual to whom the information relates if such collection is necessary for the administration of the Act.

#### **5. Use and Disclosure of Personal Information**

**5.1** Subject to the exceptions set out under section 5.2, TSSA shall use or disclose personal information only with the prior knowledge and consent of the

individual to whom the information relates, and only for the purposes for which it was collected.

## **5.2 Exceptions**

TSSA may use or disclose personal information without the prior knowledge or consent of the individual, or for purposes other than those for which it was collected, if,

- (a) the information is used or disclosed for purposes related to ongoing investigation and enforcement activity;
- (b) the information is subject to an agreement TSSA has entered into with a third party to manage or use TSSA records on its behalf, if such agreement requires the third party to comply with this Code and have in place security safeguards comparable to those used by TSSA; or
- (c) it is disclosed for the purpose for which it was obtained or for a consistent purpose.

## **6. Retention and Security of Personal Information**

**6.1** TSSA shall take all reasonable steps to ensure that personal information is kept secure from loss and theft.

**6.2** TSSA shall retain personal information only as long as necessary to fulfil the purpose for which the information was collected; however, personal information that is the subject of an access request shall be retained for as long as necessary to allow the requester to exhaust any recourse under this Code.

**6.3** TSSA shall develop procedures and practices to govern the period of time personal information is retained, and the methods by which it should be destroyed, erased or made anonymous once no longer required by TSSA.

**6.4** TSSA shall publicly post on its corporate website, under “Release of Records”, said procedures and practices in the form of a Records Retention Policy.

**6.5** Ongoing access to personal information under the control of TSSA shall be restricted to appropriate TSSA staff. TSSA shall adopt appropriate security mechanisms to prevent the unauthorized access, disclosure, use, copying or modification of personal information under its control.

## **7. Complaints and Remedies**

**7.1** TSSA shall develop and implement procedures and practices that establish a mechanism to deal with complaints regarding the release of records and personal information or the refusal to release such records or information to a

requester. If a complaint is found to be justified, TSSA shall take appropriate measures to rectify the problem, including where necessary, amending its procedures and practices.

**7.2** Where a requester challenges the accuracy and completeness of his or her personal information, TSSA shall review the information and amend the information where appropriate. TSSA shall record any challenge that has not been resolved to the satisfaction of the requester. Where third parties have access to the information in question, TSSA shall, when appropriate, transmit any amended information and provide notice of any unresolved challenge to those third parties.

## **8. Fees**

### **8.1 Public Information**

Fees payable for access to public information will be in accordance with TSSA's fee policies.

### **8.2 Personal Information of Requester**

Personal information shall be made available to the person to whom the information relates at minimal or no cost.

### **8.3 Other Personal Information**

Personal information that does not relate to the requester, other than bulk data, shall be made available to the requester at a cost that reflects the total cost of providing the information in accordance with the fee charged by the Corporation. The cost of providing bulk data shall be determined on a case by case basis. In determining fees, TSSA shall make an effort to be consistent and base costs on publicly available criteria.

## **9. Administration**

**9.1** TSSA shall implement policies and practices required to give effect to this Code, including those relating to,

- (a) the procedure for receiving and responding to requests, complaints or injuries, and the form requests and complaints should take;
- (b) advising Board members, management and staff about the Code, and providing appropriate training to ensure compliance with the Code's provisions; and
- (c) the development of brochures or other documentation describing this policy and its related procedures and practices.

## **10. Effective Date and Review**

**10.1** This Code comes into effect on its signature.

**10.2** TSSA shall make all reasonable efforts to enter into an agreement with the Archives of Ontario regarding management of records information as soon as practicable and in any event, within one year of signing this agreement subject to the agreement and cooperation of the Archives of Ontario.

**10.3** TSSA shall initiate from time to time a review of this Code and all related policy and practices.

(a) a review and analysis of any complaints received by TSSA concerning access or privacy issues, and the manner in which those complaints were resolved;

(b) a request for input from TSSA stakeholders and staff on the effectiveness of TSSA access and privacy practises;

(c) an internal audit of TSSA record management practices as they relate to paragraph 9.1(c); and

(d) an assessment of recent developments in the law applicable to access and privacy in Ontario.

[As originally signed by George Irwin](#)

Chair of the Board  
Technical Standards and Safety Authority

[April 27, 2010](#)

Date

[As originally signed by Sophia Aggelonitis](#)

The Honourable Minister Sophia Aggelonitis  
Ministry of Consumer Services

[April 28, 2010](#)

Date