

# Access and Privacy Code - Commercial Activity of TSSA

## Purpose

Pursuant to the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, this Code establishes policy and practices regarding personal information in the custody and under the control of the Technical Standards and Safety Authority (TSSA), including:

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

## Application – Commercial Activity

This Code applies to personal information collected, used or disclosed by TSSA in the course of engaging in any commercial activity, which is subject to *PIPEDA*. Accordingly, this Code incorporates access and privacy requirements prescribed by that legislation.

## Definitions

In this Code:

<i>access</i>	means access by an individual or an organization to a record of personal information in the custody of TSSA and under the control of TSSA.
<i>administration of the designated Act</i>	means the regulatory responsibilities assigned under the designated Act and includes any activity related to an obligation under the Administrative Agreement.
<i>commercial activity</i>	means any transaction, act or conduct that is of a commercial character but does not include any activity undertaken by TSSA to carry out the administration of the designated Act.
<i>designated Act</i>	means the legislation designated pursuant to the SCSAA, being the <i>Technical Standards and Safety Act, 2000</i> and the regulations under that Act, as amended from time to time.
<i>MOU</i>	means Memorandum of Understanding as entered into as stipulated by the <i>Technical Standards and Safety Act, 2000</i> .

<i>personal information</i>	means a record of information about an identifiable individual, but does not include the name, title, business address or telephone number of a member of an organization.
<i>PIPEDA</i>	means the <i>Personal Information Protection and Electronic Documents Act (Canada)</i> , that came into force in Ontario on January 1, 2004.
<i>record</i>	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.
<i>TSSA</i>	means the Technical Standards and Safety Authority, a not-for-profit corporation without share capital incorporated under the <i>Ontario Corporations Act</i> by Letters Patent dated August 30, 1996.

## **1. Accountability**

- 1.1 TSSA is responsible for all personal 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 personal 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 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 in the custody of or under the control of TSSA.

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

- 2.2.1 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 their personal information in a generally comprehensible form.
- 2.2.2 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.

**2.2.3** 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.

**2.2.4** 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.

### **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**

##### **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 of TSSA;
- (d) contains bulk data, or contains aggregate accident data or other sensitive aggregate data;
- (e) is information compiled by TSSA or supplied to TSSA for risk management or risk informed decision-making.

**3.3** TSSA may release a record under section 3.1 or 3.2 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 requestor 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; or
- (b) was generated in the course of a formal dispute resolution process.

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

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

- (a) only collect the personal information 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.

**4.2** 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,

- (a) administration of the designated Act by TSSA; or
- (b) a commercial activity of TSSA.

**4.3** 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.

**4.4** An individual may, subject to any applicable legal or contractual restrictions, withdraw consent to the use or disclosure of his or her personal information where it was collected for a purpose of a commercial activity of TSSA. TSSA shall inform the individual of any implications of such withdrawal.

### **4.5 Exceptions**

Where personal information is collected for the purposes of a commercial activity of TSSA, TSSA may collect the information without the knowledge or consent of the individual to whom the information relates if,

- (a) in the reasonable opinion of TSSA, the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- (b) the information is publicly available and specified by the regulations under *PIPEDA*; or
- (c) the collection without knowledge or consent is otherwise permitted by *PIPEDA*.

## **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**

### **5.2.1 Use**

Where personal information is collected for the purposes of a commercial activity of TSSA, TSSA may use the information without the knowledge and consent of the individual, and for purposes other than those for which it was collected, if the information,

- (a) is used for the purpose of investigating a breach of a law;
- (b) is used for the purpose of acting in an emergency that threatens the life, health or security of an individual;
- (c) was collected by TSSA under section 4.5 (a) or (b);
- (d) is publicly available and specified by the regulations under *PIPEDA*; or
- (e) is used for other excepted purposes as specified by *PIPEDA*.

### **5.2.2 Disclosure**

Where personal information is collected for the purposes of a commercial activity of TSSA, TSSA may disclose the information without the knowledge and consent of the individual if the disclosure is required by law and TSSA may, without the knowledge and consent of the individual, disclose the information for a purpose other than that for which it was collected, if the disclosure is,

- (a) made to legal counsel representing TSSA;
- (b) for the purpose of collecting a debt owed to TSSA;
- (c) required to comply with a subpoena, warrant, order or court rules relating to production of records;
- (d) made to a government institution that has made a request for the information, or on TSSA's own initiative to an investigative body or government institution as specified by *PIPEDA*;
- (e) made to a person who needs the information because of a life-threatening emergency and TSSA informs the individual of the disclosure in writing and without delay;
- (f) with respect to information that is publicly available and specified by the regulations under *PIPEDA*; or
- (g) as otherwise permitted by *PIPEDA*.

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

- 6.1** 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 or, where applicable, under Part 1 of *PIPEDA*.
- 6.2** 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.
- 6.3** 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 Personal Information of Requester**

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

### **8.2 Other Personal Information**

Personal information that does not relate to the requester shall be made available to the requester at a cost that reflects the total cost of providing the information. 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;
- (c) the need to identify, distinguish and segregate information collected, used or disclosed for commercial purposes; and
- (d) 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 upon its publication on TSSA's website. Copies of the Code may also be obtained by contacting Coordinator, Public Information/Projects, 345 Carlingview Drive, Etobicoke, Ontario, M9XW 6N9, (416) 734-3402.

**10.2** 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, including the application of *PIPEDA*.