



**Financial
Services
Commission**
Securities Division

Staff Notice 13-703

Access to Records under *The Securities Act, 1988*

Introduction

This notice sets out how the provisions of *The Freedom of Information and Protection of Privacy Act* and *The Securities Act, 1988* (the “Act”) relate to access to records created, collected or filed under the Act.

The Freedom of Information and Protection of Privacy Act

Section 5 of *The Freedom of Information and Protection of Privacy Act* (the “FOIPP Act”) provides that every person has a right of access to records that are in the possession of a government institution. We refer to these as “public” records. There are two major exceptions to this general requirement:

1. Part III of *The FOIPP Act* contains a number of exemptions from the general access requirement in section 5. The main exemptions that apply are:
 - a. section 13 – records from other governments
 - b. section 15 – law enforcement and investigations
 - c. section 16 – cabinet documents
 - d. section 17 – advice from officials
 - e. section 18 – economic and other interests
 - f. section 19 – third party information.

We refer to the records that come under these provisions as “confidential” records.

2. If the record contains “personal information” as defined in section 24 of *The FOIPP Act*, subsection 29(1) prohibits the disclosure of that information unless the exceptions in subsection 29(2) apply.

Disclosure under *The Securities Act, 1988*

The following provisions of the Act relate to disclosure of records governed by the Act:

1. Subsection 152(1) provides that materials required to be filed under the Act shall be deposited with the Commission.
2. Subsection 152(2) provides that the Commission shall make available for public inspection all material deposited pursuant to subsection 152(1).

3. Section 152.1 provides that that the Commission shall hold in confidence all information contained in internal reports and records of the Commission, subject to the exceptions in subsections (2), (3) and (4).
4. Section 15 provides that no person shall disclose, except to their counsel, any information, record or document provided pursuant to an investigation order under Part III of the Act.

In most cases, the disclosure provisions of *The FOIPP Act* override these confidentiality provisions in the Act. However, subsection 152.1(4) sets out circumstances in which the Commission may disclose personal information to other regulatory and law enforcement agencies.

Schedule A sets out the provisions outlined above, and how they relate to *The FOIPP Act*.

Schedule B – Inventory of Records

Schedule B is an inventory of the records that are created, collected or filed under the Act. For each record, we set out:

1. The provision of the Act or other authority under which the record was collected or filed;
2. Whether the record contains personal information under FOIPP Act;
3. Whether the record contains confidential information under the FOIPP Act;
4. Whether the record contains confidential information under the Act; and
5. Whether the record can be made available to the public.

The classification of a record as a confidential record under *The FOIPP Act* in Schedule B is a preliminary classification. Whenever we receive a request for access under *The FOIPP Act* we will examine the record to ensure that the exemption stated in Schedule B correctly applies to that record.

November 21, 2006

Contact:

Director
(306) 787-5842

Schedule A to Staff Notice 13-703

Confidentiality provisions in The Securities Act, 1988

Section	Wording of Provision	Relationship to The FOIPP Act
15	<p>15(1) Subject to subsection (2), no person shall disclose, except to his or her counsel:</p> <p style="padding-left: 40px;">(a) any information, testimony, record, document or thing given or provided pursuant to this Part III <i>Investigations</i> ; or</p> <p style="padding-left: 40px;">(b) the name of any witness examined or sought to be examined pursuant to this Part.</p>	Overrides the FOIPP Act. (clause 23(3)(h) of FOIPP)
152	<p>Filing and inspection of material</p> <p>152(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission.</p> <p>(2) Subject to subsection (3), the Commission shall make available all material filed pursuant to subsection (1) for public inspection during the normal business hours of the Commission.</p> <p>(3) Notwithstanding subsection (2), the Commission may hold material or any class of material required to be filed by this Act in confidence as long as the Commission is of the opinion that it is in the public interest to do so.</p>	Subject to the FOIPP Act.
152.1	<p>Confidentiality</p> <p>152.1(1) Subject to subsections (2) to (4) and section 152, the Commission shall hold in confidence all information contained in internal reports and records of the Commission, including information, evidence and witness names obtained otherwise than pursuant to section 12 or 14, as long as the Commission considers that it is in the public interest to do so.</p> <p>(2) Notwithstanding subsection (1), information contained in internal reports and records of the Commission may be disclosed in the course of a hearing or review before the Commission or Director.</p> <p>(3) Notwithstanding subsection (1), the Commission may make available any information contained in internal reports and records of the Commission to:</p> <p style="padding-left: 40px;">(a) a securities or financial services regulatory authority, law enforcement agency or other governmental or regulatory authority inside or outside Canada;</p>	Subject to the FOIPP Act, except for subsection (4) which overrides the FOIPP Act.

	<p>(b) an exchange or self-regulatory organization; or</p> <p>(c) a person or company acting on behalf of or providing services to any of the persons, companies or bodies mentioned in clauses (a) and (b).</p> <p>(4) Notwithstanding subsection (1) and <i>The Freedom of Information and Protection of Privacy Act</i> but subject to the regulations, where the Commission considers it necessary for the purposes of section 3.1, the Commission may provide personal information within the meaning of <i>The Freedom of Information and Protection of Privacy Act</i> to:</p> <p>(a) a securities or financial services regulatory authority, law enforcement agency or other governmental or regulatory authority inside or outside Canada;</p> <p>(b) an exchange or self-regulatory organization; or</p> <p>(c) a person or company acting on behalf of or providing services to any of the persons, companies or bodies mentioned in clauses (a) and (b).</p>	
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