



NOTICE FROM THE OFFICE OF THE SECRETARY – GUIDELINES FOR THE MANAGEMENT OF PERSONAL INFORMATION

6 January 2012

Notice to parties in proceedings governed by the New Brunswick Securities Commission's Local Rule 15-501 *Procedures for Hearings before a Panel of the Commission* (LR 15-501).

This notice supplements a prior notice from the Office of the Secretary issued on Tuesday 19 April 2011 titled *Public Access to Documents*.

The *Right to Information and Protection of Privacy Act* (RIPPA) sets out parameters for the collection and disclosure of personal information by government bodies including the Commission. Personal information is information that can be used to uniquely identify, contact, or locate a single person. For the purpose of this notice, a person does not include a corporation.

For this notice, distinction is made between third party personal information and respondent personal information:

- third party personal information is personal information with respect to a person involved or connected to a proceeding in a capacity other than as a respondent (such as a complainant, witness, victim, etc.)
- respondent personal information is personal information with respect to a person who is a respondent in a proceeding before the Commission.

Personal information relating to third parties must be protected from unauthorized disclosure to persons outside the Commission.

Respondent personal information is treated differently, as the public interest mandate of the Commission requires that the identity of a person who has been or, in some cases, is the subject of proceedings under the *Securities Act* be identifiable to the public. Therefore for the purpose of this notice, respondent personal information excludes the following:

- the full or part of the name of a respondent.
- any aliases used by a respondent.
- the address of the respondent, sufficient to distinguish the respondent from any other persons who may have the same or similar name.

- the year of the respondent's birth, if needed to distinguish the respondent from any other persons who may have the same or similar name.

This notice contains recommended practices for the proper management of personal information in the course of proceedings before the Commission.

Pleadings

The inclusion of personal information in pleadings should be avoided when such inclusion is not necessary for the purpose of a proceeding. In particular:

- the requirements of Local Rule 15-501, section 13(6) must be met.
- third parties should not be identified with initials as this may still permit an inference of identity -- a single capital letter or a capital letter combined with a sequential number should be used (for example "witness W1" , or "investor I1").
- it is not necessary to remove corporate identifiers.
- pleadings should be carefully reviewed before filing to ensure no information is present that may lead to the discovery of the identity of third parties.

Evidence

In general, parties should seek to avoid the inclusion of personal information in evidence, unless it is required for the effectual presentation of the case.

Affidavits

The inclusion of personal information in the body of an affidavit should be avoided when possible. Exhibits to an affidavit should be redacted of personal information unless it is practically infeasible to do so or the personal information is required for the effectual presentation of the evidence.

If redacting an exhibit, the affidavit should clearly state that redaction of a particular exhibit has been effected and why. For example: "Attached hereto as Exhibit "Q" is a copy of a bank statement, with the name and address of the account holder redacted for privacy reasons."

Recordings

Private recording of the proceedings is prohibited.

Dealing with personal information at a hearing

The Commission must promote openness in its proceedings and decision making processes, while taking into account the privacy interests of the parties and third parties involved in a manner consistent with its obligations under RIPPA.

Exhibits at a hearing

Exhibits introduced at hearings should be redacted to remove personal information not relevant to the proceeding provided such redaction does not interfere with the proper conduct of a proceeding or otherwise affect the ability of a party to fully present its case.

If possible, parties to the proceeding should seek to reach consent on any redactions prior to the commencement of the hearing.

An unredacted version of a redacted exhibit should be available for review in the event a dispute arises with respect to the appropriateness or necessity of the redaction.

Viva voce evidence

Counsel should ask witnesses to attempt to avoid referring to irrelevant personal information in the course of giving evidence, when possible.

Various measures to restrict disclosure

Imposing restrictions on an open hearing must be limited as much as possible. However, in some instances Hearing Panels of the Commission may use one of several means available to them to control the release of personal information in the course of a hearing. These means include:

- issuing a caution to attendees;
- refusing the admission of personal information into evidence if it has little or no probative value;
- issuing one of the following orders:
 - A publication ban.
 - A sealing order.
 - An editing order.
 - An anonymity order.
 - An order excluding the public from a hearing (an *in camera* hearing).

Effective Date

This practice notice is effective immediately.

"original signed by"

Manon Losier
Secretary to the Commission