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Purpose

This document sets out the CRT’s policy regarding access to dispute records and information about disputes: who can access those records and what information in dispute records the CRT makes available to the public. The policy is intended to guide CRT employees, members and contractors, when they are dealing with requests for access to records related to a CRT dispute.

The CRT’s objectives for this policy are to:

- Strike the appropriate balance between the competing policy goals of maintaining transparent decision-making processes and protecting the privacy interests of the parties involved,
• Promote consensual resolution of disputes, by confirming the confidentiality of settlement discussions between the parties to a CRT dispute; and
• Protect, to the extent reasonably possible, the privacy interests of third parties (e.g. witnesses), where the third parties’ personal information becomes part of the CRT records as a result of the dispute resolution process.



Application of this Policy

1. This policy applies to all CRT records stored and maintained by the CRT that are linked to a CRT dispute (“dispute records”), regardless of the method by which the information was recorded or the media on which it is stored.
2. This policy applies only to records that are in the care, custody or control of the CRT and does not apply to records in the care, custody or control of a party or witness.
3. This policy does not apply to documents issued by the CRT or copies of CRT dispute records that are filed with another agency or a court. Once filed with the agency or court, its rules and policies will apply.
4. This policy does not apply to a personal note, communication or draft decision made by a CRT case manager or member in the course of adjudicating a dispute or making decisions about how to facilitate the dispute.
5. This policy does not apply to CRT administrative records, financial management and personnel records that are subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Background

The CRT’s online dispute resolution process replaces a model where the trial or hearing is held in-person, in a courtroom that is open to the public. In most cases in the courts, the public has physical access to the hearing rooms and can observe the proceedings and see the parties present their evidence and arguments. Parties can search physical records at court registries to access pleadings, evidence and court decisions.

As most CRT hearings involve written submissions and the hearings are rarely conducted in-person, there needs to be some way of providing transparency for the Tribunal’s decision-making process. Transparency is partly realized by the statutory requirement that the CRT post its final decisions on its website (<https://decisions.civilresolutionbc.ca/crt/en/nav.do>). As well, the public may request a copy of the evidence and submissions provided by the parties to the CRT during the hearing stage, upon payment of the applicable fee.

Another consideration reflected in this policy is that parties may negotiate resolution of a dispute that is before the court away from the court or in a court-hosted environment that is closed to the public (e.g. a small claims settlement conference). Parties who are engaged in discussions intended to resolve a CRT dispute should be entitled to a similar level of privacy and confidentiality, even though the discussions may be facilitated through the CRT’s online platform.



Protecting Personal Information and Privacy

The CRT's goal of providing transparent decision-making processes must be balanced with people's reasonable expectations that their personal information will not be disclosed, except where authorized and necessary to support the dispute resolution process. As a result, CRT policy requires that tribunal employees, members and contractors have an obligation to protect personal information and only disclose it to third parties when required by legislation, CRT rules, a tribunal or court order, or where disclosure is necessary to satisfy the CRT's duty to act fairly and transparently.

To the extent reasonably possible, the CRT:

- only includes personal information in notices, communications and decisions where there is an administrative justice or operational requirement to do so;
- takes steps to ensure that any notices and communications that contain personal information are delivered to the recipients' preferred address for that type of communication and that notices and communications are not misdirected to incorrect destinations;
- avoids referring to personal information about non-parties in CRT decisions, unless disclosure of the personal information is required for administrative fairness or is a critical element in the decision;
- where disclosure is authorized by this Policy, only discloses as much personal information as is necessary to satisfy the request, the policy objectives outlined above, and the requirements of the *Civil Resolution Tribunal Act* and CRT Rules; and
- where the CRT discloses information contrary to its policies, the tribunal will immediately take steps to inform the proper recipients of the information and remedy the inadvertent disclosure.

Although the Civil Resolution Tribunal Act requires that the CRT post decisions on a publicly available website, there are circumstances where the CRT will not publicly identify people referred to in those decisions. Where required by this policy (see [Minors and Parties with Impaired Capacity](#)) or by decision of the CRT chair or a member (see [Sealing Records of CRT Proceedings](#)), the CRT will redact a party's name and other personal information in decisions posted on the CRT website.



If a party wants his or her name redacted from the decision, the party should make a request that the CRT do so, before the dispute enters the CRT's hearing stage (Tribunal Decision Process). The tribunal member hearing the dispute will decide whether the information should be redacted. In making that decision, the member will consider:

- a) the circumstances of the case and nature of evidence provided;
- b) the potential impact of disclosure on the person; and
- c) the CRT's goals of transparent decision-making processes and protection of the personal information.

Security and Storage of CRT Records

Sub-section 86 (1) of the Civil Resolution Tribunal Act requires that the CRT must protect personal information in its custody or under its control. Sub-section 86 (2) requires that the CRT must ensure that personal information in its custody or under its control is stored only in Canada¹.

Most information provided by parties during the CRT's dispute resolution process is recorded electronically in the tribunal's Dispute Resolution Suite (DRS). The CRT also uses DRS to generate some records and send them to the parties. DRS operates on a cloud-based platform provided by Salesforce.com. The Salesforce servers are located in Montreal, Quebec and are operated by Amazon Web Services (AWS). Both the Salesforce platform and the AWS servers are subject to the highest possible levels of security for the data it stores.

The CRT also uses other types of software (Word, Adobe Acrobat, Outlook) to create and distribute other records. These CRT dispute records are stored on a dedicated drive accessed through the CRT's Local Area Network (LAN). The CRT also uses the LAN to store other records submitted by parties that cannot currently be recorded in DRS, including communications, evidence, submissions, request forms, etc.² These records are stored in various electronic formats, including email, text files, Word, Adobe pdf, images, video, etc. on a server in the Telus Data Centre in Kamloops (operated by Telus, pursuant to a contract with the Province of BC). Access to the drive is limited to employees, full time members and contractors authorized by the CRT.

¹ As of the date of this policy, sub-section 86 (2) is not in force. However, the CRT anticipates it will be brought into force at some time in 2018.

² Over time, enhancements to DRS will permit the CRT to store most of these records in DRS as well, linking them directly to the dispute.



In limited circumstances, CRT dispute records are placed in a library (folder) on the CRT SharePoint site, to provide read-only access to tribunal members for decision-making purposes (as most members do not have access to DRS or the LAN). Members' access to the SharePoint library is limited to read-only and only certain CRT employees have read-write access to the library. The SharePoint documents are also stored on a server in the Telus Data Centre in Kamloops.

In addition to the digital records, the CRT maintains physical records for some dispute-related information. This is generally limited to physical evidence or digital files on portable encrypted memory devices that are too large to transfer to the LAN or DRS. The CRT keeps these physical records within a locked cabinet, in a secure file room at the CRT's offices.

The CRT requires that staff, members and contractors adhere to the following policies and procedures, to ensure dispute records are handled in a manner that ensures the security of the information in those records:

- Maintain the integrity and security of the CRT's online systems, by adhering to government IM/IT policies, such as:
 - not sharing passwords;
 - viewing and downloading dispute records only where required for dispute resolution activities (e.g. by a member, for adjudication of the dispute);
 - using only secure methods (e.g. encrypted USBs) where it is necessary to download dispute information from DRS or a CRT server;
- Records and information shall be disclosed only in accordance with this policy;
- Verify the accuracy of the intended recipient's address or contact information in all communications, before the communications are finalized and sent;
- Downloading electronic dispute records to personal computer or electronic devices is prohibited, except where it is stored as temporary record on the device, for the purpose of accessing and viewing the record from a secure CRT facility (DRS, LAN or SharePoint);
- Requiring that temporary records caches or folders on personal computers or electronic devices are cleared regularly (at least weekly);
- Dispute records should be printed only where necessary; printed copies of records shall be kept secure after printing; and the records must be shredded as soon as the printed copy is no longer required;
- When viewing electronic or printed dispute records, staff, members and contractors shall ensure there is no ability for an unauthorized person to inadvertently see the contents of a record, by avoid viewing the records in public, unless absolutely necessary to do so;



- Where it is necessary for a member or employee to have a portable, electronic copy of a CRT record, the record must be stored on an encrypted memory device provided by the CRT;
- Access to the CRT's physical records storage area is restricted to authorized persons;
- Limiting the disclosure and communication of dispute information or records to persons and circumstances authorized by this policy.

The CRT has taken the following steps to ensure adherence to these security precautions and this policy:

- Developing DRS functionality so that the system generates and sends most dispute communications, reducing the risk of human error that results in a communication being sent to the wrong person;
- Creating procedures, together with associated checklists, that reduce the potential for inadvertent unauthorized disclosure of information (e.g. a required step that staff double-check contact information before sending correspondence);
- Providing employees with privacy, security and records management training that is tailored to the unique requirements of the CRT, as set out in this policy;
- Requiring that employees and members acknowledge, in writing, that they have read and understand the applicable Standards of Conduct document and the government Information Management and Information Technology Agreement;
- Holding regular meetings with employees to remind them of the requirements of this policy and the need to maintain the security of CRT systems and physical records.

Access to Records

A. Overview

CRT disputes go through up to four stages of dispute resolution:

1. **Intake** – To initiate a CRT dispute resolution process, applicants submit an application to the CRT. The CRT reviews the application and, if appropriate, issue a Dispute Notice to the applicant, who is responsible for serving it on the respondent(s). After being served, the respondent(s) has a limited period of time to file a Dispute Response to the Notice with the CRT. If a Dispute Notice is not filed, the applicant may request a default decision from the CRT.

*While a dispute is in the CRT **Intake** stage, only CRT staff and the parties to the dispute (including their approved representatives) have access to the CRT's dispute records.*



- 2. Negotiation and Facilitation** – If the respondent files a Dispute Response, the dispute is referred to Negotiation and Facilitation, to attempt consensual resolution of the dispute. In Negotiation, the parties may use the CRT’s secure online platform to negotiate directly with each other. During Facilitation, a CRT case manager attempts to guide the parties to a consensual resolution. If it becomes apparent that the parties will not be able to resolve the dispute consensually, the Case Manager advises the parties that Facilitation is complete and refers the dispute for preparation for the Tribunal Decision Process (see below). A Case Manager assists the parties in preparation of the Tribunal Decision Plan, by having them provide their evidence and submissions in support of their positions on the claims.

*While a dispute is in the **Facilitation** stage, access to most dispute records is still limited to CRT staff and parties to the dispute. To comply with section 89 of the Act, the CRT will not provide non-parties access to records of discussions or communications aimed at resolution of the dispute, even after the dispute is resolved.*

- 3. Tribunal Decision Process (TDP)** – The TDP is the CRT hearing process. Once the parties have completed the Tribunal Decision Plan, the dispute is assigned to a CRT member for a final decision. The Tribunal Decision Plan will be the basis for most CRT decisions, but the member making the decision may supplement the Plan with a telephone or video conference. In rare cases, the CRT will conduct an in-person hearing for the dispute.

*The public is able to search for and obtain records for most disputes in the **Tribunal Decision Process** stage. As well, non-parties can request access to most dispute records that do not involve discussions or communications regarding settlement of the dispute. To access the records, non-parties must complete a Public Information Request Form and pay the applicable fees. CRT staff will review the request and, if authorized by this policy, provide the requester with access. In some cases, the request may be reviewed by a CRT member, to ensure providing access is consistent with the purposes of this policy.*

- 4. Post-resolution Support** – After the dispute is resolved, whether consensually or through the Tribunal Decision Process, the CRT provides the parties information about how to enforce the CRT decision. In some cases, a party may disagree with the CRT decision and may be able to appeal to the BC Supreme Court (strata property disputes) or file a Notice of Objection in order to proceed to a Provincial Court trial.



If a dispute was resolved through the Tribunal Decision Process, the public may request access to the initiating documents (Dispute Notice and Dispute Response), as well as evidence and arguments submitted during the Tribunal Decision Process, unless access is specifically restricted (see below, regarding [Sealing Records of CRT Proceedings](#)). The person requesting access must complete the Public Information Request Form and pay the applicable fees. Anyone may search and read CRT final decisions on the CRT’s website. If the dispute was resolved during facilitation, the public can only request copies of any orders made as a result of that settlement and the initiating documents (Dispute Notice, Dispute Response), upon submission of a Public Information Request Form.

B. Types of Records and Access

The table below lists the types of records that are commonly found in a CRT dispute. The table also indicates who can have access to each record type and, if so, what limitations may apply to the access.

Legend:					
Y: Yes – can be accessed	N: No – cannot be accessed	R: Subject to review by CRT staff or member			
P: Can be accessed by party record is about	SR: May be searchable, subject to review	N/C: If Intake/Facilitation, No; If complete, Yes			
L/V Listen or View only	S: Searchable	W: Available on website			
Type of Record (electronic or physical)	CRT Staff	CRT Members	Applicant*	Resp.*	Public
Application for Dispute Resolution	Y	Y	Y	Y	N/C
Dispute Notice	Y	Y	Y	Y	N/C
Proof of Notice Form	Y	Y	Y	Y	N/C
Dispute Response Form	Y	Y	Y	Y	N/C
Request for Waiver of Fees Form	Y	Y	P	P	N
Request for Directions on How to Provide Notice Form	Y	Y	Y	Y	SR
Counterclaim/Third Party Claim Form	Y	Y	Y	Y	N/C
Other CRT Forms	Y	R	R	R	SR
Party contact information	Y	Y	Y	Y	N/C
Indices of CRT disputes	Y	Y	Y	Y	N/C



Legend:

Y: Yes – can be accessed	N: No – cannot be accessed	R: Subject to review by CRT staff or member
P: Can be accessed by party record is about	SR: May be searchable, subject to review	N/C If Intake/Facilitation, No; If complete, Yes
L/V Listen or View only	S: Searchable	W: Available on website

Type of Record (electronic or physical)	CRT Staff	CRT Members	Applicant*	Resp.*	Public
Party special circumstances	Y	Y	P	P	N
Request for representative	Y	Y	Y	Y	N/C
Discussions and communications between parties and/or CRT, regarding resolution of dispute	Y	N	Y	Y	N
Discussions and communications between CRT case manager and one party, regarding resolution of dispute (caucusing)	Y	N	P	P	N
Notes, summaries, transcripts or other records of facilitated dispute resolution activities	Y	N	Y	Y	N
Settlement Agreement or draft Settlement Agreement	Y	N	Y	Y	N
Other correspondence between CRT and one or more parties	Y	R	Y	Y	SR
Notices from CRT to one or more parties	Y	Y	Y	Y	SR
Tribunal Decision Plan	Y	Y	Y	Y	N/C
Evidence disclosed by a party during Intake or Facilitation	Y	N	Y	Y	N
Evidence submitted by a party during Tribunal Decision Process	Y	Y	Y	Y	S
Submissions and arguments submitted by a party to the CRT (other than as part of TDP)	Y	Y	Y	Y	SR
Summons Form	Y	Y	Y	Y	R
Witness statements submitted during Tribunal Decision Process	Y	Y	Y	Y	SR
Evidence submitted by a witness during Tribunal Decision Process	Y	Y	Y	Y	SR
Consent order	Y	R	Y	Y	S
Default/non-compliance order	Y	R	Y	Y	S
Tribunal final decision and order	Y	Y	Y	Y	W
Request for Cancellation of Final Decision or Dismissal Form	Y	Y	Y	Y	SR



Legend:					
Y: Yes – can be accessed	N: No – cannot be accessed	R: Subject to review by CRT staff or member			
P: Can be accessed by party record is about	SR: May be searchable, subject to review	N/C: If Intake/Facilitation, No; If complete, Yes			
L/V Listen or View only	S: Searchable	W: Available on website			
Type of Record (electronic or physical)	CRT Staff	CRT Members	Applicant*	Resp.*	Public
Other Tribunal decisions and orders	Y	Y	Y	Y	SR
Recordings of Oral Hearings	Y	Y	L/V	L/V	L/V
Transcripts from Oral Hearings (if filed with CRT)	Y	Y	Y	Y	S
Public Information Request Form	Y	Y	R	R	P
Other records, not identified	Y	R	R	R	R

* Includes representative of Applicant or Respondent

C. Minors and Parties with Impaired Capacity

The CRT will not disclose to the public personal information related to a minor or a party who has impaired capacity (a party with impaired capacity refers to a person who has a committee of estate, a representative appointed in a representation agreement, or an attorney appointed in an enduring power of attorney). To support transparency in disputes involving minors or parties with impaired capacity, the CRT may, at its discretion, provide access to dispute records, subject to the following:

- Where the public is entitled to access dispute records, any information in the records that might identify a minor or a person with impaired capacity will be redacted (this also applies to a witness in the dispute);
- Any system-generated indices of disputes that are made available to the public will include only the initials of minors and persons with impaired capacity, instead of full, legal names;
- In public versions of decisions and orders, the CRT will use initials to refer to persons who are minors or have impaired capacity, rather than their full legal names;
- CRT staff responsible for reviewing draft decisions and orders will check to ensure any persons who are minors or have impaired capacity are referred to using their initials.



Sealing Records of CRT Proceedings

The CRT chair (or another member designated by the Chair) may, at any time, order that access shall be limited for some or all information and records related to a specific dispute. Such an order/direction may apply to records and information that would otherwise be available to the public or to a party to the dispute. The order/direction may also include restrictions on which CRT employees and members may access the records and information.

Any order/direction sealing the records for a dispute shall specify the following:

- a) the case number and style of cause for the dispute;
- b) what types of records the order/direction applies to;
- c) who may have access to the records and what those persons may do with them (view only or photocopy);
- d) the reason for the order/direction; and
- e) the expiry date of the order/direction, if any.

A request for the Chair to seal records can be initiated by any person, whether or not that person is a party to a proceeding or an employee or member of the CRT.

An order/direction sealing CRT records does not prevent a party from submitting those records as part of a Tribunal Decision Process, or from using the records for the purposes of a notice of objection, appeal or judicial review from a CRT decision.

References:

CRT Rules: [TRIBUNAL INFORMATION AND DOCUMENTS](#)

CRT Rules, Public Request for Information Form

CRT Rules, [Table of Fees](#)

Civil Resolution Tribunal Act. Sections 85 through 90, 62 (1) and 62 (2) (I) (ii) and (iii)



APPENDIX

Strategies for staff and members to avoid unnecessary disclosure of personal information:

1. During Facilitation and preparation for the Tribunal Decision Process, the parties should be advised to avoid identifying third parties, except where that party's identity is part of the evidence or they are a witness and will provide a statement.
2. Facilitators should take reasonable steps to review evidence and other submissions provided by parties and request parties reconsider and resubmit, where irrelevant personal information is included.
3. All CRT staff should avoid including names or personal information in communications, except where the name or personal information is clearly relevant (e.g. it is required by principles of natural justice; it is impractical to refer to a party by role, such as where there are multiple applicants or respondents).
4. When drafting decisions, members should try to refer to parties by their role ("Applicant", "Respondent"), unless a party's name is required for clarity. Unless necessary to the decision, members should refrain from including identifying information including, for example, location, addresses, family information, financial or health information, occupation, third party information, and school or work details.
5. When drafting decisions that refer to people who are not parties to the dispute, members should try to anonymize the names (e.g. use initials) and avoid including other personal information for the non-parties (do not use dates of birth, social insurance or bank account numbers, etc.), unless specifics are required by the principles of natural justice.
6. CRT staff, members and contractors should flag a case and bring it to the attention of the Chair or Registrar, if there is any indication that some additional restrictions should be placed on access to information about the dispute, the parties or a witness.