

Condominium Authority of Ontario Access and Privacy Policy (Schedule J to Administrative Agreement)

1.0 Purpose

The purpose of this Policy is to set out how the Condominium Authority of Ontario (CAO) and Condominium Authority Tribunal (CAT) will effectively protect, and provide access to, personal information and records held by them.

1.1 Application

- a) Sections 1, 2, 3 and 6 of this Policy apply to both the CAO and CAT.
- b) Section 4 of this Policy applies only to personal information and records collected by the CAO.
- c) Section 5 of this Policy applies only to adjudicative records included in the case files of the CAT.

2.0 Definitions

- a) “Act” means the Condominium Act, 1998.
- b) “Adjudicative Record” has the meaning given to it in subsection 1 (1) of the Tribunal Adjudicative Records Act, 2019.
- c) “Authority” or “CAO” means the Condominium Authority of Ontario.
- d) “Delegated Provisions” means the provisions of the Act specified by the Lieutenant Governor in Council in regulation, and of which the administration is delegated to the CAO in accordance with the Act.
- e) “Non-Statutory Business” means other activities carried out in accordance with the CAO’s objects or purposes that are outside of its Statutory Mandate.
- f) “Personal information” means any information about a recognizable individual that is recorded in any form. This does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
- g) “Record” means any record of information, however recorded, whether in printed form, film, by electronic means or otherwise in the custody and control of the CAO for the fulfillment of the Statutory Mandate.
- h) “Statutory Mandate” means the exercise of the authority delegated to the CAO pursuant to the Act, which is comprised of:
 - a. Part I.2 of the Act; and
 - b. The Delegated Provisionsbut does not include Non-Statutory Business ventures.
- i) “Tribunal” or “CAT” means the Condominium Authority Tribunal.

3.0 Protection, Retention, and Destruction of Personal Information and Records

3.1 Protecting Personal Information

The CAO and CAT recognize the importance of protecting the personal information and records in their care. To prevent the unauthorized disclosure, use, copying or modification of personal information in the custody and under the control of the CAO and CAT, access to such information shall be restricted using appropriate security mechanisms. The CAO and CAT will:

- a) Take reasonable steps to prevent theft, loss or misuse of personal information and records, and protect them from unauthorized access, modification or destruction;
- b) Implement physical and organizational protections for paper records;
- c) Enable passwords and other technological protections for electronic records;
- d) Take reasonable steps to ensure that personal information held by the CAO and CAT is accurate and up to date, based upon the information provided to it; and
- e) Ensure that all employees, the Board of Directors, Tribunal Members and all consultants or contract workers employed by the CAO have received adequate training to comply with this Policy.

3.2 Retention of Personal Information and Records

The CAO will retain information for as long as is necessary to fulfill the purpose for which it was collected or for its use in accordance with this Policy, and for 12 months thereafter in order to provide an opportunity for the individual to access their own personal information. A record of personal information may be retained beyond this time period in the following circumstances:

- a) Another law requires or authorizes the retention;
- b) The record is reasonably required for fulfillment of the Statutory Mandate; or
- c) The record is transferred to storage or archives for historical research or permanent preservation, provided it is made anonymous of personal information as described in Section 4.2.

Records stored in the case files of the CAT will be stored for a minimum of seven years. All CAT orders and decisions may be retained indefinitely.

3.3 Destruction of Personal Information and Records

Any records that are retained for historical research or permanent preservation must be made anonymous.

For all records that have fulfilled the purposes for which they were collected, have fulfilled any further uses in accordance with this Policy, and are not to be retained, the record will be destroyed in a manner that is appropriate given its medium:

- a) A paper record of personal information, and all copies, shall be shredded before it is destroyed.
- b) Electronic data containing personal information is to be deleted from hardware that hosted the data.
- c) Before hardware that hosted electronic data is discarded or destroyed, all electronic data containing personal information is to be deleted.

4.0 Condominium Authority Ontario

4.1 Collection, Use and Disclosure of Personal Information by the CAO

4.1.1 Collecting Personal Information

- a) The CAO will collect personal information only where it is required for its legitimate purposes to fulfill the Statutory Mandate which includes responding to queries from the public, managing operations, meeting legal requirements, developing and improving our digital services and reasons outlined under subsection 4.1.2. Personal information shall be collected only by lawful means.
- b) Subject to subsection 3.1 (c), personal information will be collected with written consent directly from the person to whom it relates, not from a third party, and the purpose of the collection and how personal information will be used will be explained at or before the time the information is collected.
- c) Subsection 3.1 (b) shall not apply to information that is being collected in response to a complaint.

4.1.2 Using and Disclosing Personal Information

- a) The CAO must have the written consent of the individual to whom the personal information relates before it can be used or disclosed to a third party for a purpose other than that for which it was collected, except as set out in this subsection and subsection 3.2 (c).
- b) Third party access to personal information should only be provided where it can be demonstrated that the third party has put in place means to protect personal information which are comparable to those of the CAO. If personal information is made available to a third party on an ongoing basis, any revised information will be regularly provided.
- c) Personal information that has been collected by the CAO in accordance with this Policy may be used or disclosed without the consent of the individual only in the following circumstances:
- d) If the information is necessary to respond to an emergency;
- e) If the information is reasonably required for the CAO to fulfill the Statutory Mandate;

- f) If the CAO is using personal contact information collected to reach out to individuals to hear from them directly and/or to invite them to participate in various feedback opportunities so that the CAO may better understand their needs and determine how best our services and resources can serve Ontario's condo communities; or
- g) if, the disclosure is to aid in an investigation undertaken by an institution or law enforcement agency in Canada with the view to law enforcement proceeding or there is a reasonable basis to believe that an offence may have been committed and the disclosure is to enable the institution or the agency to determine whether to conduct such an investigation.

4.2 Access to Information

4.2.1 Accessing Own Personal Information

The CAO will confirm the existence of, and provide an individual access to, their own personal information held by the CAO, except where such access and disclosure would:

- Constitute an unjustified invasion of another individual's personal privacy, unless that individual consents to the release and disclosure of the information;
- Violate a legally recognized privilege;
- Violate intellectual property law; or
- Violate provisions of any applicable act or regulation.

To request such access, the individual must submit a request in writing to the Access and Privacy Officer of the CAO. The CAO will, in the normal course, respond to such a request within 5 business days and at no cost, unless such response involves the review of a large number of records or meeting the request would unreasonably interfere with the operations of the CAO.

4.2.2 Corrections, Updates or Completeness of Personal Information

Where an individual disagrees with the accuracy of their personal information on file with the CAO, the individual has the right to challenge its accuracy and demand its amendment.

Following the confirmation of proof of identity and upon request of any corrections or updates by an individual, the CAO shall amend the individual's personal information on file with the CAO to reflect either:

- i) the requested change; or
- ii) if requested by the individual, a statement of disagreement if an amendment was requested but not made, to be attached to the information and the individual's file, which must also be transmitted to any third parties with access to the information.

Amendments to the personal information or records shall be made as soon as practicable, but no later than 30 days from the time that the CAO makes the determination to amend the personal information or record.

4.2.3 Public Access to Records

The CAO will provide public access to records in its possession unless the release of information would:

- 1) Constitute an unjustified invasion of personal privacy;
- 2) Violate a legally recognized privilege;
- 3) Reasonably be expected to threaten the life, health or security of an individual;
- 4) Involve information that is the substance of deliberations by the CAO's Board of Directors and its committees, including but not limited to agenda, minutes, policy options and analysis, internal advice, proprietary information and advice to government;
- 5) Involve commercial, proprietary, technical or financial information related to an individual or commercial enterprise who has supplied the records to the CAO in confidence, if disclosure would result in undue loss or gain, prejudice a competitive position, or interfere with contractual or other negotiations of such individual or commercial enterprise; or
- 6) Violate provisions of the Act or the regulations made thereunder.

To request such access, a member of the public must submit a request in writing to the CAO's Access and Privacy Officer. The CAO will respond to requests within 5 business days and at no cost, unless such response involves the review of a large number of records or meeting the request would unreasonably interfere with the operations of the CAO.

4.3 Remedies

If an individual who requested access to information is not satisfied with the CAO's response, the requester may ask the CAO to review the decision. This request for review must be in writing, addressed to the Registrar and must describe what aspect of the response the requester wishes to have reviewed. A final decision on the request will be provided within 30 days of receipt of the review request.

If the CAO is unable to respond within 30 days, the CAO shall advise the requester of the date a response can be expected.

5.0 Condominium Authority Tribunal

5.1 The Open Court Principle and Access to CAT Records

5.1.1 The Open Court Principle

The CAT is guided by the open court principle and is committed to transparency, accountability and accessibility in its decision-making and operations.

The open court principle requires that the CAT provide public access to adjudicative records

included in its case files. This access and transparency support the public's understanding of and confidence in the administrative justice system.

In some circumstances, public access to CAT adjudicative records may be restricted by a statutory provision, common law rule, or a CAT or court order that restricts access (e.g., information relating to minors or privileged information).

All of the CAT's decisions and non-procedural orders are available online free of charge on CanLII.

5.1.2 Personal Information May Become Public

The CAT recognizes that sensitive personal or financial information may be included in the adjudicative records provided by Users during a proceeding. Personal information, including names, addresses, contact information, medical, financial, employment, and education information, submitted during a proceeding may become public and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

The CAT will proactively inform Users that adjudicative records contained in its case files will ultimately be available to the public unless a confidentiality order has been issued and will provide guidance to Users about what that means for them throughout the process.

5.1.3 Confidentiality Orders

The CAT may make limited exceptions to the availability of adjudicative records to protect important legal and privacy interests. On its own initiative or on request by a User or an individual whose personal information is contained in the CAT's adjudicative records; the CAT will decide on a case-by-case basis whether it would be appropriate to make an order to:

- restrict public access to a hearing;
- restrict access to all or part of the adjudicative records filed with the CAT;
- restrict the publication of certain information; or,
- anonymize an individual's name or other identifying information in the CAT's decision.

Individuals seeking an order restricting access to adjudicative records contained in CAT case files should request that a Tribunal Member make a confidentiality order.

Individuals can request a confidentiality order at any point during the dispute resolution process (including after the case has closed), though requests should be made at the earliest opportunity.

Requests for confidentiality orders can be requested at any time and will be handled by the following individuals in the following circumstances:

5.1.4 Requests for Confidentiality Orders

- If the case is currently in, or closed during, Stage 1 – Negotiation: Requests will be handled by the Chair of the CAT or by one of the CAT's Vice-Chairs, as decided by the Chair;

- If the case is currently in, or closed during, Stage 2 – Mediation: Requests will be handled by the Tribunal Member assigned to the case for Stage 2 – Mediation; or,
- If the case is currently in, or closed during, Stage 3 – Tribunal Decision: Requests will be handled by the Tribunal Member assigned to the case for Stage 3 – Tribunal Decision.

5.1.5 Considerations

In deciding whether to issue a confidentiality order, the Tribunal Member will consider several factors including the nature of the information at issue, the interests of affected individuals, and the public interest in the openness of proceedings.

For greater specificity, please note that the CAT is guided by the provisions regarding the issuance of confidentiality orders set out in section 2 (2) of the *Tribunal Adjudicative Records Act, 2019* – in particular, the CAT may issue a confidentiality order if:

- a) matters involving public security may be disclosed; or
- b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

5.2 Accessing CAT Records

5.2.1 Contents of CAT Records

Subject to sections 5.2.2 – 5.2.7 of this Policy, the adjudicative records contained in the CAT's case files are available to the public on request. CAT case files may include the following adjudicative records:

- The Applicant's application, and any other documents submitted when the case was filed;
 - For greater clarity, the application submitted by a User contains the names of the Users and a description of the issues in dispute, but does not include the addresses, email addresses, or phone numbers of the Users.
- Notices of hearing;
- Correspondence to and from the CAT;
 - For greater clarity, "correspondence" includes any messages sent between a CAT Member and one or more Users through the CAT's online system in Stage 3 – Tribunal decision.
- Written submissions;
- Documentary evidence;
- Recordings of oral portions of the proceeding, if any;
- Orders and / or decisions; and,
- Hearing schedules.

Personal notes, draft decisions, draft orders and communications related to draft decisions/orders are not part of a case file.

5.2.2 Records Related to Negotiation and Mediation

Negotiation and mediation discussions are part of the CAT dispute resolution process and are intended to help resolve and/or narrow the issues in dispute. Any materials, messages, submissions or documents provided to the CAT during Stage 1 – Negotiation and Stage 2 – Mediation are privileged and confidential and will not be available to the public, unless those same documents were also introduced by at least one of the Users in Stage 3 – Tribunal Decision.

5.2.3 Restrictions on Access

The CAT may order that some or all the adjudicative records contained within a CAT case file are confidential in accordance with section 5.1.3 of this policy.

5.2.4 Effective Date

The CAO's CAT staff will provide copies of adjudicative records contained in the CAT's case files only if those cases were commenced on or after the effective date of this Policy.

Adjudicative records contained in CAT case files that were commenced before the effective date will not be available to the public.

5.2.5 Accessing Records

An individual seeking access to the CAT's adjudicative records must submit a request in writing to the CAO's Access and Privacy Officer. The CAO's Access and Privacy Officer will respond to requests on behalf of the CAT within 5 business days and at no cost to the requestor.

5.2.6 Timeframes for Public Access

The CAO's CAT staff will provide access to requested records as quickly as possible. The time to provide access can be affected by various factors, including whether records are archived and other staff responsibilities and priorities.

If a request for adjudicative records contained within a case file is made while that case is still open, the CAT may refrain from providing the requested records until the case has closed.

5.2.7 Fees

Fees may be charged to search for, collect, or copy records in response to a request for access to information.

6.0 Administration

The CAO will publish in electronic format all policies, practices, standards, codes and brochures pertaining to its management of personal information.

6.1 Privacy Officer

The CAO has identified an Access and Privacy Officer who is responsible for the CAO and CAT's compliance with this Policy and for responding to requests for access to information. The CAO will investigate all complaints relating to this Access and Privacy Policy and will act accordingly based on the results of the investigation.

Requests for access to information, questions or comments on this Policy may be send to the Access and Privacy Officer at the following email address:

privacy@condoauthorityontario.ca or mailed to:

The Access and Privacy Officer
The Condominium Authority of Ontario
P.O. Box 69038 RPO St. Clair Centre, Toronto, Ontario M4T 3A1

6.2 Review of this Policy

This Policy will be reviewed at regular intervals by the senior officers or Board of Directors of the CAO to ensure that it continues to serve its intended purpose. This may include reviewing:

- Procedures in place to protect personal information;
- The effectiveness of procedures for handling complaints relating to this Policy;
- The effectiveness of procedures for addressing information requests; and,
- Any other amendments that should be made to improve the operation of this Policy and the protection of personal information.

The Authority will submit any amendments to this Access and Privacy Policy to the Minister of Public and Business Service Delivery for approval.