

SCHEDULE “H” – ACCESS AND PRIVACY CODE

RETIREMENT HOMES REGULATORY AUTHORITY

Overview

1. The Retirement Homes Regulatory Authority (RHRA) is an independent, self-funded, not-for-profit regulator mandated to administer the *Retirement Homes Act, 2010* (Act).
2. Pursuant to the MOU, this Code establishes policy and procedures about information in the custody of the RHRA and under its control, including:
 - a. Access to information contained in records held by the RHRA;
 - b. The protection of Personal Information and Personal Health Information;
 - c. The collection, use, disclosure and handling of information, including Personal Information and Personal Health Information, by the RHRA; and
 - d. Procedural rights and remedies concerning the handling of information.
3. Although the *Freedom of Information and Protection of Privacy Act* does not apply to the RHRA, the RHRA is committed to promoting transparency and accountability of its Regulatory Activities, while also ensuring the privacy of Personal Information, Personal Health Information, and sensitive business information.
4. The access to information procedures in this Code do not apply to the RHRA’s sharing of information with the Minister and Ministry.

Purpose

5. The purposes of this Code are:
 - a. To provide and describe a right of access to information under the RHRA’s Custody and Control to the extent permitted by the Act and applicable

legislation including the *Personal Health Information Protection Act, 2004*, in accordance with the principles that,

- i. relevant information that advances informed decision-making should be available,
 - ii. exemptions to the right of access should be limited and specific, and
 - iii. there must be effective procedures relating to the review of decisions about the disclosure of information; and
- b. To protect the privacy of individuals with respect to Personal Information and Personal Health Information held by the RHRA.

Definitions

6. The following definitions apply in this Code:

- a. “Act” means the *Retirement Homes Act, 2010*, and its associated regulations;
- b. “Code” means this Access and Privacy Code of the RHRA;
- c. “Control” means the power or authority to make a decision about the use or disclosure of a Record;
- d. “Custody” means the keeping, care, watch, preservation or security of a Record for a legitimate business purpose;
- e. “Frivolous or Vexatious Purpose” includes any request for access to information that, for example: is made without any reasonable ground; has no legitimate purpose but is designed to harass or to accomplish some other objective unrelated to the process being used; is a repeat request for the purpose of revisiting a previously addressed issue; is made in bad faith; or is a speculative or indiscriminate demand for information without any reasonable grounds to identify an expected outcome;

- f. “Minister” means the Minister for Seniors and Accessibility or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*;
- g. “Ministry” means the Ministry of the Minister;
- h. “Personal Health Information” means Personal Health Information as defined in the *Personal Health Information Protection Act, 2004*;
- i. “Personal Information” means information about an identifiable individual or by which an individual’s identity could be deduced, but does not include the name, title, business address or telephone number of an officer, director or employee of an organization, or a person acting in a business capacity, or information related to someone who has been deceased for more than thirty years;
- j. “Record” means any document or record of information in any form and includes a record containing Personal Health Information and Personal Information;
- k. “Regulatory Activity” means the RHRA’s administration of the Act, including engagement in an inquiry, licensing matter, inspection, compliance monitoring, investigation, mandatory report, complaint, Registrar’s order or decision respecting enforcement, or prosecution, or any related review, hearing, appeal, or legal proceeding; and
- l. “RHRA” means the Retirement Homes Regulatory Authority.

Application

- 7. This Code applies to information that is collected, created, used or disclosed by the RHRA in administering the Act and includes Personal Information and Personal Health Information.

Accountability

8. The RHRA is responsible for all Records under its Custody and Control and shall designate an individual or individuals who are accountable for compliance with this Code.
9. Pursuant to paragraph 8 above, the RHRA has appointed a Chief Privacy Officer to oversee compliance with this Code and any related policies and procedures, as well as to receive privacy complaints. The Chief Privacy Officer shall be accountable for all decisions to release or not release information and for the administration of this Code and may delegate some or all of their responsibilities.
10. The creation, collection, use and management of information may be the responsibility of other individuals within the RHRA.
11. Although the RHRA takes reasonable steps to ensure the accuracy of the information provided under this Code, it does not warrant or otherwise guarantee that the information is complete, accurate and/or up-to-date.

Statutory Duty of Confidentiality

12. The RHRA will provide access to information in accordance with this Code to the extent it is permitted under the Act.
13. The RHRA is required under section 113 of the Act to preserve secrecy with respect to any information, including Personal Information and Personal Health Information, that is obtained in performing a duty or exercising a power under the Act and must not communicate the information to any person, subject to the following specific exceptions set out in the Act:
 - a. As may be required in connection with a proceeding under the Act or in connection with the administration of the Act and the regulations;
 - b. To a ministry, department or agency of a government engaged in the administration of the Act;

- c. To a peace officer to aid a prospective or ongoing inspection, investigation or similar proceeding undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- d. In a criminal proceeding, as required by law;
- e. With the consent of the person to whom the information relates;
- f. To the counsel of the person to whom the information relates;
- g. To the extent that the information is available to the public under the Act;
- h. If the information relates to compliance with the Act or the regulations or relates to a serious incident involving a retirement home and if the information is communicated to a person who administers or enforces another Act or a regulation made under another Act, as may be required to aid an inspection, investigation or similar proceeding related to the administration or enforcement of the other Act or regulation;
- i. As permitted or required by law; or
- j. Under further circumstances that are prescribed in regulations, which are for the communication of information to the following persons or entities:
 - i. A ministry, department, agency or administrative authority of a government engaged in the administration of legislation similar to the Act or legislation that protects consumers, or any other entity to which the administration of legislation similar to the Act or legislation that protects consumers has been assigned.
 - ii. The Chief Medical Officer of Health, a medical officer of health or the Minister, all as defined in the *Health Protection and Promotion Act*.

- iii. The Fire Marshal, the fire chief of a fire department or the clerk of a municipality, all within the meaning of the *Fire Protection and Prevention Act, 1997*.
- iv. An entity or organization engaged in the protection of consumers in Ontario if the purpose of the communication is consumer protection.
- v. The governing body of a profession regulated under Ontario legislation if the purpose of the communication is consumer protection or public health and safety.
- vi. An entity or organization that provides or facilitates the provision of a care service, if the purpose of the communication is public health and safety.

14. In addition, the Act restricts the RHRA from making publicly available inspection reports or Registrar orders containing Personal Information or Personal Health Information.

Access to Information

15. Subject to the Act and the exemptions in this Code, every person has a right of access to:

- a. Information that is mandated to be available to the public under the Act;
- b. Information that may be communicated to those persons under section 113 of the Act; and
- c. That person's own Personal Information and Personal Health Information that is in the Custody and Control of the RHRA.

Accessibility for Persons with Disabilities

16. Upon request, the RHRA will provide or arrange to provide accessible formats and communication supports, including support making access to information

requests and complying with the Privacy and Access to Information Review Procedure, for persons with disabilities according to the *Accessibility for Ontarians with Disabilities Act, 2005* and the RHRA's Accessible Customer Service Policy.

Access to Public Information

17. The RHRA is required to maintain the following information in a publicly available register, which is located on the RHRA website:

- a. For each application for a licence,
 - i. the name and address of the applicant,
 - ii. the name and address of the retirement home,
 - iii. a statement whether there is an automatic sprinkler in the room of each resident of the retirement home or elsewhere in the home and, if so, information about the sprinklers,
 - iv. the number of residents that the retirement home can accommodate,
 - v. the care services that the applicant, when licensed, will make available to the residents of the retirement home, and
 - vi. information about the status of the application, including any decision that the Registrar has made with respect to the application and information about any appeals from that decision.
- b. For each licence,
 - i. the name and address of the licensee,
 - ii. the name and address of the retirement home,

- iii. a statement whether there is an automatic sprinkler in the room of each resident of the retirement home or elsewhere in the home and, if so, information about the sprinklers,
- iv. the number of residents that the retirement home can accommodate,
- v. the care services that the licensee makes available to the residents of the retirement home,
- vi. the class of licence, if any, issued to the licensee,
- vii. the conditions, if any, imposed on the licence by the Registrar,
- viii. a summary of each inspection report prepared with respect to the retirement home, with all personal information and personal health information redacted,
- ix. information about any orders issued by the Registrar to the licensee, including information about appeals from those orders, with all personal information and personal health information redacted,
- x. information about any conviction of the licensee or any of its directors or officers for an offence under the Act, including the penalty imposed on conviction,
- xi. information about any termination, revocation or surrender of the licence,
- xii. the name of the primary contact person for the licensee and, if available, additional contact information for the licensee, such as e-mail address, telephone number, fax number and website address,
- xiii. the name of every person who has a controlling interest in the licensee,

- xiv. a unique identifier for the licence,
- xv. the date that a licence to operate the home was first issued, and
- xvi. the name of the person, if any, that the licensee employs or retains to manage the operations or most of the operations of the home.

18. Public information includes a record that the RHRA has published on its website or has otherwise determined is necessary to make available to the public to carry out its administration of the Act.

Access Request Procedure

19. Requests for access to information must be made in writing in the form and manner specified by the RHRA on its website.

20. Within 30 days of receiving a written request for access to information, the RHRA will provide the requester with an estimated time to deliver a formal response to the request and the approximate cost, if any, of responding to the request to confirm whether the requester wishes to proceed with or withdraw the request.

21. Upon receipt of a written request and confirmation from the requester under paragraph 20 of this Code that the requester wishes to proceed, the RHRA will determine whether any of the exemptions to access set out in the Act or this Code apply.

22. The RHRA will, having considered the request and the exemptions and provisions of the Act and this Code, provide the requester with access to some or all of the records requested or with written notice denying some or all of the request.

23. Where a request is denied, the requester may request a review of the denial under paragraph 49 of this Code. The review decision is the final internal review mechanism by the RHRA.

Exemptions to Access

24. The RHRA shall refuse a request for access to records that:

- a. Could reveal Personal Information or Personal Health Information about an individual other than the requester, unless access is permitted by law or with the written consent of the individual to whom the information relates; or
- b. Would be contrary to the Act.

25. The RHRA may refuse a request for access to records that, in its determination:

- a. May violate a legally recognized privilege such as solicitor-client privilege, litigation privilege, or settlement privilege or was prepared by or for counsel in giving or seeking legal advice;
- b. May derive from or interfere with a legal proceeding under the Act;
- c. May derive from or interfere with a Regulatory Activity;
- d. May reveal investigative techniques and/or procedures currently in use or likely to be used in RHRA's Regulatory Activities;
- e. May disclose the identity of a source of information in respect of a regulatory activity, or disclose information furnished only by the source;
- f. May jeopardize the health or safety of any person;
- g. May deprive a person of the right to a fair hearing or impartial adjudication;
- h. May endanger the security of a building or of a system or procedure established for the protection of items, for which protection is reasonably required;
- i. May facilitate the commission of an unlawful act or impede the enforcement or administration of the Act;

- j. May have been generated in the course of a dispute resolution process, including the handling of complaints under the Act;
- k. May reveal commercial, scientific, proprietary, technical, financial or human resources information of the RHRA or of any individual, entity, licensee or third party that has supplied the records to the RHRA in confidence, whether explicitly or implicitly or that may suffer harm if the information is disclosed;
- l. May reveal the substance of deliberations, including but not limited to agenda, minutes, policy options and analysis, advice from staff or an external consultant, advice to government, or a draft of a by-law, resolution or regulations, by one or more of the following: the RHRA's Board of Directors, including its committees, sub-committees and task forces, advisory committees, the Risk Officer, the Complaints Review Officer, the CEO, the Registrar, Deputy Registrar or other RHRA management, legal counsel, employees, or agents;
- m. May be unreasonably costly or time-consuming for the RHRA to provide, taking into account the nature of the request and the volume of documents requested;
- n. May be for a Frivolous or Vexatious Purpose, as determined by the RHRA;
- o. May breach a contractual obligation on the part of the RHRA;
- p. May be a report or other information supplied by a government, regulatory or enforcement body to the RHRA in confidence, whether explicitly or implicitly; or
- q. May reveal procurement information, including information submitted to the RHRA in response to a procurement process.

26. Where information that is exempted from an access request can be reasonably severed or redacted from a record, the RHRA may sever or redact the exempted information and provide the requester with access to the remaining part of the record that is otherwise not the subject of any exemption. Whether information can be reasonably severed or redacted will depend, in part, on resources needed to complete the severance or redactions.
27. The RHRA may refuse to confirm or deny the existence of a record where disclosure of the existence of the record would constitute an unjustified invasion of an individual's personal privacy (for example because it relates to a medical or psychological history, diagnosis, condition, treatment or indicates an individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations) or where disclosure of the existence of the record could reasonably be expected to compromise a Regulatory Activity or legal proceeding.

PROTECTION OF PERSONAL INFORMATION AND PERSONAL HEALTH INFORMATION

Collection of Personal Information and Personal Health Information

28. The RHRA shall limit the collection of Personal Information and Personal Health Information to that which is reasonably necessary to carry out the RHRA's statutory objects.
29. The RHRA collects information, which may include Personal Information and Personal Health Information about residents of retirement homes, from licensees, operators of retirement homes, residents, and other persons for the purposes of monitoring and ensuring a licensee's compliance with the Act, assessing whether a person meets the criteria for a RHRA licence, and to administer the Act.
30. The RHRA collects Personal Information, including Personal Health Information, about residents of retirement homes and members of the public in relation to complaints made and concerns raised about licensees and operators of retirement homes. The primary purposes for collecting this information are to assess whether a person has a valid complaint or has raised a valid concern

about a licensee or operator, to provide information regarding the person's rights and responsibilities, and to manage or resolve the complaint or concern.

31. The RHRA collects Personal Information from applicants for a licence and from licensees, including officers, directors, and persons who have a controlling interest in applicants and licensees. The primary purposes for collecting this information are to determine if the person meets the criteria for a licence under the Act, to ensure compliance with the Act, and to administer the Act.
32. Where an individual voluntarily provides the RHRA with their Personal Information or Personal Health Information, the individual consents to its use and disclosure in accordance with this Code and for the purpose of administering the Act, and other relevant legislation. Such consent may also be implied through the individual's conduct with the RHRA.
33. Subject to the exception set out in paragraph 34 of this Code, where the RHRA collects Personal Information and Personal Health Information, it shall, where practical,
 - a. Only collect Personal Information directly 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 their consent for its collection, use and disclosure by the RHRA for that purpose.
34. Where it is necessary for the administration of the Act, including when conducting inspections, licensing and compliance inquiries, investigations, and other regulatory activities, the RHRA may collect Personal Information and/or Personal Health Information without the knowledge or consent of the individual to whom the information relates, and/or without communicating the purpose of the collection.

Use and Disclosure of Personal Information and Personal Health Information

35. Subject to the exceptions set out under paragraph 36 of this Code, the RHRA shall use Personal Information and/or Personal Health Information only for the purposes for which it was collected and shall disclose such Personal Information and/or Personal Health Information only to the person to whom the information relates or with the consent of the individual to whom the information relates.

36. In accordance with section 113 of the Act, the RHRA may use or disclose Personal Information and/or Personal Health Information without the consent of the individual, or for purposes other than those for which it was collected as follows:

- a. As may be required in connection with a proceeding under the Act or in connection with the administration of the Act and the regulations, including but not limited to the RHRA's Regulatory Activities;
- b. To a ministry, department or agency of a government engaged in the administration of the Act;
- c. To a peace officer to aid a prospective or ongoing inspection, investigation or similar proceeding undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- d. In a criminal proceeding, as required by law;
- e. To the counsel of the person to whom the information relates;
- f. To the extent that the information is available to the public under the Act;
- g. If the information relates to compliance with the Act or the regulations or relates to a serious incident involving a retirement home and if the information is communicated to a person who administers or enforces another Act or a regulation made under another Act, as may be required to aid an inspection, investigation or similar proceeding related to the administration or enforcement of the other Act or regulation;

- h. As permitted or required by law;
- i. Under further circumstances that are prescribed in regulations under the Act, which are to:
 - i. A ministry, department, agency or administrative authority of a government engaged in the administration of legislation similar to the Act or legislation that protects consumers, or any other entity to which the administration of legislation similar to the Act or legislation that protects consumers has been assigned.
 - ii. The Chief Medical Officer of Health, a medical officer of health or the Minister, all as defined in the *Health Protection and Promotion Act*.
 - iii. The Fire Marshal, the fire chief of a fire department or the clerk of a municipality, all within the meaning of the *Fire Protection and Prevention Act, 1997*.
 - iv. An entity or organization engaged in the protection of consumers in Ontario if the purpose of the communication is consumer protection.
 - v. The governing body of a profession regulated under Ontario legislation if the purpose of the communication is consumer protection or public health and safety.
 - vi. An entity or organization that provides or facilitates the provision of a care service, if the purpose of the communication is public health and safety.

37. The RHRA may also disclose Personal Information and/or Personal Health Information without the consent of the individual, or for purposes other than those for which it was collected as follows:

- a. To the Risk Officer in accordance with the Act;
- b. To a person or entity specified by the Minister conducting a review pursuant to s. 19.2 of the Act;
- c. To the Complaints Review Officer in accordance with the Act; or
- d. To the Auditor General in accordance with the Act and the *Auditor General Act*, R.S.O. 1990, c. A. 35.

Security of Personal Information and Personal Health Information

38. The Chief Privacy Officer shall ensure that reasonable measures relating to records containing Personal Information and Personal Health Information are developed and put into place to protect Personal Information and Personal Health Information under the RHRA's Custody and Control.
39. Having regard to the level of sensitivity of the particular information, the RHRA shall take reasonable steps to ensure that Personal Information and Personal Health Information, contained in both paper and electronic form, is kept secure from loss and theft.
40. The RHRA shall ensure appropriate administrative and security mechanisms are in place to prevent the unauthorized access, disclosure, use, copying or modification of Personal Information and Personal Health Information under its Custody and Control.
41. Ongoing access to Personal Information and Personal Health Information held by the RHRA shall be authorized only to appropriate RHRA staff as needed for regulatory activities.

Correction of Personal Information and Personal Health Information

42. Where an individual has obtained access to information from the RHRA and disagrees with the accuracy of Personal Information and/or Personal Health Information about themselves held by the RHRA, the individual may challenge the accuracy and have it addressed as follows:

- a. Individuals requesting corrections to their own Personal Information and/or Personal Health Information in order to ensure its accuracy and/or completeness must send their requests in writing to the RHRA in the form and manner specified by the RHRA on its website. The request must include sufficient detail to identify the applicable Personal Information or Personal Health Information and the correction being sought.
- b. The RHRA will make reasonable efforts to respond in writing to a request for correction(s) or amendment(s) to Personal Information or Personal Health Information within 60 days of receiving the request.

43. Where the RHRA agrees to correct or amend a record of Personal Information or Personal Health Information:

- a. Amendments or corrections to Personal Information in records received from the individual to whom it relates shall be recorded by RHRA as soon as practically possible; and
- b. As applicable, the RHRA will provide written notice to every third party to whom the original record was provided within the previous twelve (12) months, unless to do so is impractical or would reasonably interfere with the Regulatory Activities of the RHRA.

44. If an individual's request for a correction or amendment is refused, the RHRA shall provide the reasons for the refusal in writing to the individual to whom the information relates. The RHRA will also file with the record a brief statement of disagreement provided by the individual if requested, unless to do so is impractical or would reasonably interfere with the Regulatory Activities of the RHRA.

45. The RHRA may be unable to make a requested correction, due to circumstances that include, but are not limited to the following:

- a. The fact that the statement was made, whether it is correct or not, is relevant to the Regulatory Activities of the RHRA;
- b. The RHRA determines that it does not have sufficient knowledge, expertise or authority to make the correction;
- c. Correction or amendment may reasonably interfere with a Regulatory Activity of the RHRA;
- d. Correction or amendment may reasonably interfere with the regulatory or enforcement activities of another statutory regulatory body or a law enforcement agency;
- e. Correction or amendment may alter an original document that was not created by the RHRA;
- f. Correction or amendment is not material to the RHRA's Regulatory Activity related to the record; or
- g. Correction or amendment is prohibited by a law.

ADMINISTRATION AND PROCEDURES

Fees

- 46. Nominal administrative fees, set out in the RHRA's fee schedule, may apply for Personal Information and/or Personal Health Information requests that are made by the person to whom the information relates.
- 47. Administrative fees, set out in the RHRA's fee schedule, may apply for all other records that are made available to a requester in accordance with this Code.
- 48. The administrative fees for providing access to records may include costs for research or retrieval, including staff time.

Complaints and Remedies

49. Complaints about the RHRA's handling of Personal Information, denied access to information requests or correction to records shall be made in accordance with the Privacy and Access to Information Review Procedure published by the RHRA on its website.
50. Decisions of the RHRA in accordance with its Privacy and Access to Information Review Procedure are the final internal RHRA review mechanism.

Administration

51. The RHRA shall implement policies and procedures as necessary to give effect to this Code.
52. Questions about the RHRA's information policies and procedures and/or about this Code may be directed to privacy@rhra.ca.

Interpretation

53. In the event that this Code conflicts with the Act or any other applicable legislation, the Act or the applicable legislation, as the case may be, prevails.

Effective Date and Review

54. This Code comes into effect on October 1, 2024.
55. The RHRA shall initiate from time to time a review of this Code and related policies and procedures. If changes are made to the procedures outlined above, they will be approved by the Minister and posted on the RHRA's website.

**Retirement Homes Regulatory
Authority**



Chair of the Board

Date: November 2, 2023

**His Majesty the King in right of
Ontario**



Minister for Seniors and Accessibility

Date: November 14, 2023