

SCHEDULE "H"

ELECTRICAL SAFETY AUTHORITY

ACCESS & PRIVACY CODE

1. Overview

- 1.1. The Electrical Safety Authority (ESA) is a not-for-profit corporation mandated by the Lieutenant Governor in Council to administer Part VIII of the Electricity Act, 1998. This document establishes policy and practices regarding information in the custody and control of ESA, including:
 - a) Access to information collected or maintained by ESA in the administration of its statutory mandate, including personal information;
 - b) Protection of Personal Information;
 - c) The principles for the collection, use and disclosure of personal and other information by the ESA in the administration of its statutory mandate; and
 - d) Effective and timely procedural remedies concerning the handling of personal and other information collected by ESA in the administration of its statutory mandate.
- 1.2. Further information on how ESA administers this Code can be found in the ESA's Customer Privacy Policy.
- 1.3. The access to information procedures in this Code do not apply to ESA's sharing of information with the Minister or MPBSD.

2. Purpose

- 2.1. The purposes of this Code are to:
 - a) Provide a right of access to information under the custody and control of the ESA in accordance with the principles that information should be available to the public and exemptions from the right of access should be limited and specific; and
 - b) Establish principles with respect to the protection of privacy with respect to personal information in the custody and control of ESA and to provide those individuals with a right of access to that information.

3. Application

- 3.1. This Code applies to Records and Personal Information collected, used or disclosed by ESA in the course of ESA's statutory mandate. It does not apply to documents collected, used or disclosed in the course of activities covered by Schedule I (Non-Regulatory Business Policy) of the administrative agreement signed with the Minister.

4. Definitions

4.1. In this Code:

<i>Access</i>	means access by an individual or an organization to a Record in the Custody and Control of ESA.
<i>Act</i>	means Part VIII of the <i>Electricity Act, 1998</i> , S.O. 1998, c.15, as amended from time to time.
<i>Bulk Data</i>	means Records requested in bulk or selective form (not an individual Record) that may have commercial value.
<i>Control</i>	means the power or authority to make a decision about the use or disclosure of a Record.
<i>Custody</i>	means the keeping, care, watch, preservation or security of a Record for a legitimate business purpose.
<i>Data Breach</i>	means the loss of, unauthorized disclosure of or unauthorized access to information resulting from a breach of ESA's technological, organization or physical security safeguards or from a failure to establish such safeguards.
<i>Enforcement</i>	means: (a) policing; (b) complaints from the public, or investigations, deliberations or inspections by ESA or other provincial or federal enforcement bodies that lead or could lead to proceedings in a court or tribunal; (c) compliance with regulatory requirements; or (d) the conduct of proceedings referred to in (b).
<i>ESA</i>	means the Electrical Safety Authority, a not-for-profit corporation without share capital incorporated under the <i>Corporations Act</i> , R.S.O. 1990, c.C.38 by Letters Patent dated January 12, 1999.
<i>Frivolous and Vexatious Request</i>	means 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.

<i>MPBSD</i>	means the Ministry of Public and Business Service Delivery.
<i>Minister</i>	means the Minister of Public and Business Service Delivery or any other member of the Executive Council to whom the responsibility for the administration of the Act is assigned.
<i>Personal Information</i>	means a record of information about an identifiable individual. It does not include information about a business, whether structured as a corporation, partnership, sole proprietorship or otherwise (including the licensing status, name, title, business address or telephone number of an officer/director or employee of an organization, an ESA licensee or a person acting in a business capacity). As set out at s.6 of this Code, it does not include address information associated with an electrical inspection in the absence of any other identifying information.
<i>Public Information</i>	means information that is publicly available, including information that ESA has published on its website at www.esasafe.com or that ESA has otherwise determined is necessary to make available to the public in accordance with its administration of the Act and associated Regulations.
<i>Record</i>	means any record of information, however recorded, whether in printed form, or film, by electronic means or otherwise in the custody and control of the ESA pursuant to ESA's administration of the Act.

5. Accountability

- 5.1. ESA is responsible for all Records and Personal Information under its custody and control and shall designate an individual or individuals who are accountable for the corporation's compliance with this Code.
- 5.2. A Chief Privacy Officer has been appointed by ESA's Chief Executive Officer to have accountability for the administration of this Code. ESA's Chief Privacy Officer may be contacted by email at privacyofficer@electricalsafety.on.ca or by mail at:

Chief Privacy Officer
Electrical Safety Authority
155 Matheson Blvd. West
Mississauga, ON L5R 3L5
- 5.3. The ongoing collection, use and management of information may be the responsibility of individuals within ESA other than the Chief Privacy Officer.
- 5.4. Although ESA 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 completely accurate and/or up-to-date.

6. Access to Records

- 6.1. Subject to the exemptions in this Code, every person has a right of access to a Record or a part of a Record in the custody and under the control of ESA containing the following information:
- a) their own Personal Information;
 - b) information relating to ESA inspection of electrical installations at individual sites in Ontario;
 - c) the licensing status of an individual or entity licensed by ESA;
 - d) the outcome of product safety reviews; and
 - e) Public Information.
- 6.2. ESA shall provide the public with ready access to Public Information as is relevant to ESA's administration of the Act. This information shall be made available on ESA's website, in communication campaigns or in other ways determined by the Chief Privacy Officer.

7. Access Procedure

- 7.1. A request for Access shall be made in writing to ESA. ESA shall maintain a process for making such a request and make that process available to the public on ESA's website.
- 7.2. Upon receiving a written request for Access, ESA shall within a reasonable period of time having regard to the volume and nature of the Records requested and the exemptions in this Code, provide the person with Access to the Records requested. As applicable, ESA shall provide reasons to a requester for denying access to Records or Personal Information.
- 7.3. ESA shall maintain effective procedures and practices which establish time frames for responding to requests for Access to Records and Personal Information. ESA will make best efforts to respond to access requests within 30 days, unless an extension of time is required. Information in this regard shall be made available to the public on ESA's website. ESA shall provide an estimate of the cost, if any, of providing the information and confirm whether the requester wishes to proceed with the request.
- 7.4. Where a person requests access to a Record that contains Personal Information about a person other than the requester, ESA will not provide Access to the requester unless documentation of the consent of the affected person is provided by the requester or obtained by ESA. Whether or not such consent can be reasonably sought by ESA will depend on the circumstances.
- 7.5. Upon request, ESA shall advise an individual regarding the existence, use and disclosure of their Personal Information and, subject to the exemptions noted in section 8 of this Code, provide the individual with access to their Personal Information in a comprehensible form.

8. Exemption to Access

- 8.1. Mandatory Exemptions: ESA shall refuse to disclose Records that constitute:

- a) Personal Information, disclosure of which violates another individual's right to privacy, unless that individual consents to the disclosure; or
- b) Records containing commercial, proprietary, technical or financial information of ESA or of any person or business that has supplied the Records to ESA with a reasonable expectation of confidence, if disclosure would result in undue loss or gain, prejudice a competitive position or interfere with contractual or other negotiations unless access is required by law, the information is already public information or access is appropriate in litigation or regulatory proceedings.

Note: For the purpose of s. 8.1(a): inspection information with respect to an identified address that does not contain other identifying information is deemed not to be Personal Information.

8.2. Discretionary Exemptions: ESA may refuse to disclose Records and Personal Information where the disclosure:

- a) May violate a legally recognized privilege such as solicitor-client privilege, litigation privilege or settlement privilege or may have been prepared by or for counsel in giving or seeking legal advice or in contemplation of litigation;
- b) May derive from or compromise an enforcement activity, including where access may be refused under the exceptions described in subsection 14(1) of the *Freedom of Information and Protection of Privacy Act* if it applied to ESA;
- c) May impair the ability of ESA to provide a fair, safe and informed marketplace that supports a competitive economy;
- d) May involve bulk data;
- e) May involve information that may reveal the substance of deliberations by ESA's Board of Directors (including its committees, sub-committees and task forces), ESA committees, ESA executive or other managers including but not limited to, agendas, minutes, policy options and analysis, advice or recommendations to or from employees or an external consultant, proprietary information, and advice to or from government;
- f) Violates a provision of the Act;
- g) Could reasonably be expected to adversely impact compliance with regulatory requirements;
- h) Could reasonably be expected to seriously threaten the safety or health of an individual or may not be in the public interest.
- i) Is an audio recording of a telephone call made for quality assurance purposes;

- j) May be information compiled by ESA or supplied to ESA for the purposes of risk management or risk-informed decision making;
- k) May be a report or other information supplied by a government, regulatory or enforcement body to ESA in confidence, whether explicitly or implicitly;
- l) May reveal procurement information, including information submitted to ESA in response to a procurement process;
- m) May reveal proposed plans, policies or projects of ESA where disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or would cause undue financial loss or benefit to a person;
- n) May have been generated in the course of a dispute resolution process including, for example, mediation or the handling of a complaint; or
- o) May be a Frivolous and Vexatious Request.

8.3. ESA shall disclose as much of the Record as can be reasonably severed without disclosing information captured by sections 8.1 or 8.2.

8.4. ESA may refuse to confirm or deny the existence of a Record to which subsection 8.1 or 8.2 applies.

9. Collection & Retention of Personal Information

9.1. ESA collects, uses and discloses Personal Information to fulfil its statutory mandate. ESA is committed to maintaining the privacy and security of that Personal Information in accordance with applicable privacy law and best practice principles of privacy. ESA's policy with respect to the collection, use, disclosure, storage and destruction of Personal Information is also set out in more detail in the Customer Privacy Policy available on its website [link].

9.2. It is a requirement of this Code, as further explained in more detail in the Customer Privacy Policy, as amended from time to time, that:

- a) ESA shall collect, use and disclose Personal Information in accordance with the purposes for which it is collected and used and disclosed.
- b) ESA must limit the collection of personal information to that which is needed to fulfill the enunciated purposes.
- c) ESA must obtain consent to the collection, use and disclosure of personal information (which may include implied and express consent), except as required or authorized by law.
- d) ESA must implement measures to prevent unauthorized access, disclosure, use, copying or modification of Personal Information.

9.3. Subject to the exceptions set out under section 9.4 of this Code, ESA shall use Personal Information only for the purposes for which it was collected and shall disclose Personal Information only with the consent of the person to whom the information relates.

9.4 ESA may use or disclose Personal Information without the consent of the person, or for purposes other than those for which it was collected, if:

- a) It is required under ESA's administration and enforcement of Part VIII of the Electricity Act, 1998;
- b) To provide customer service assistance;
- c) To administer ESA's Reviews and Appeals Process;
- d) To detect and protect ESA and third parties against error, negligence, breach of contract, fraud, theft and other illegal activity, and to audit compliance with ESA policies and contractual obligations;
- e) It is permitted by, and to comply with, any legal or regulatory requirements or provisions applicable to ESA,
- f) It is required to protect or defend ESA's legal interests;
- g) It is authorized under the Regulatory Modernization Act, 2007;
- h) It is required for the purpose of establishing or collecting a debt owed to the ESA
- i) The information is disclosed to a prescribed entity or organization, if the purpose of the disclosure is public safety;
- j) It is requested by or disclosed to the counsel of the person to whom the Personal Information relates;
- k) It is disclosed to ESA's counsel;
- l) The information is disclosed for the purpose for which it was obtained or for a consistent purpose;
- m) The information is publicly available;

ESA limits both the amount and type of Personal Information collected to that which is necessary to fulfill the purposes outlined above.

10. Complaints & Remedies

10.1. Where an individual disagrees with the accuracy of their Personal Information, the individual has the right to challenge its accuracy and have it amended as appropriate. Such requests should be made in writing to the Chief Privacy Officer. Where a correction is requested but not made, a statement of disagreement must be maintained on file and the individual will be advised of the reasons for refusal in writing. Where a correction is made to the Personal Information of a statement of disagreement maintained on file, that information shall be communicated to the individual as soon as practical.

10.2. The following complaints or concerns should be reported in writing to ESA's Chief Privacy Officer:

- a) Report of a Data Breach or suspected Data Breach involving information in ESA's Custody or Control or of a concern regarding ESA's handling of Personal Information shall be reported in writing to ESA's Chief Privacy Officer and shall describe the concern or incident the person wishes to have reviewed.

- b) Complaints regarding the release of Records and Personal Information or the refusal to release such Records or information to a requester should be made in writing to the Chief Privacy Officer.

10.3. The Chief Privacy Officer or their designate shall respond to a complaint or concern described in s. 10.2 within 30 days of receipt of the report. If the Chief Privacy Officer or their designate is unable to respond within 30 days, they shall advise the person who made the report of the date a response can be expected. Where a complaint or concern is found to be justified, ESA shall take appropriate measures to rectify the problem, including where necessary, amending its procedures and practices.

11. Fees

- 11.1. Personal Information shall be made available to the person to whom the information relates at a reasonable or no cost.
- 11.2. Records, other than Bulk Data, shall be made available to a requester at a cost that reflects the total cost of providing the information. The cost of providing Bulk Data will be determined on a case by case basis. In determining fees, ESA will make efforts to be consistent and base costs on publicly available criteria.
- 11.3. Fees for access requests are not subject to the Fee setting processes established under Schedule "F" of the ESA Administrative Agreement with the Minister.

12. Administration

- 12.1. ESA shall implement practices and procedures required to give effect to this Code. This shall include:
 - (a) advising Board members, management, employees and contract workers about the Code and providing appropriate training to ensure compliance with the Code's provisions; and
 - (b) The development of documentation describing this Code and its related practices and procedures.
- 12.2. ESA shall make information regarding this Code and related processes available to the public.

