

Proposed BC Policy 13-602 *Confidentiality of Records*

Part 1 - Records required to be filed

Under section 169(3) of the *Securities Act*, the Commission must make all records filed under the Act or regulations available for public inspection. For most records, we do this by posting them on our public website (www.bcsc.bc.ca) or arranging for them to be on one of the national websites we have established through the Canadian Securities Administrators (www.sedar.com and www.sedi.ca).

Section 169(4) permits the Commission to hold all or part of a record in confidence if a person would be unduly prejudiced by disclosure of information in the record, and the person's privacy interest outweighs the public's interest in disclosure. The Commission rarely exercises this discretion and generally considers the circumstances on application on a case-by-case basis.

When making a decision to hold a record in confidence, the Commission considers whether the record contains either

- personal information for which disclosure would be an unreasonable invasion of an individual's privacy, or
- sensitive business information, the disclosure of which could harm the competitive position of the business.

If you intend to file a document with the Commission and want it to be kept confidential, you can apply for a decision under section 169(4). There is information on our website about how to apply for a local decision or for a multi-jurisdictional decision under the Mutual Reliance Review System (National Policy 12-201). The application should explain how a Commission decision to hold the document confidential would meet the test in section 169(4).

If the document is filed with a prospectus, you can make the request for confidentiality in the cover letter for the prospectus, instead of making a formal application. The decision will be evidenced by the receipt for the prospectus unless the Commission indicates otherwise. If you do not make the request in the cover letter, you will need to make a formal application following the process described in the previous paragraph.

Part 2 - Freedom of Information Request

Even if the Commission holds a record in confidence under section 169(4), anyone can apply for access to the record under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

The relevant tests for refusing access to a record under sections 21 and 22 of FOIPPA are similar to the tests we apply in holding a record confidential under section 169(4). However, additional considerations might apply in the circumstances of a FOIPPA request that could lead to a different decision than under section 169(4). For example, FOIPPA might require us to provide to a person a confidential record if it is relevant to a fair determination of the person's rights in a legal proceeding. Before we release any information of this type under FOIPPA, we normally provide to the person who has a privacy or business confidentiality interest notice of the FOIPPA request and an opportunity to make submissions.

This policy replaces section 21.9 of BC Policy 45-601 *Statutory and discretionary exemptions*.