

Board Practice Direction: Access to Hearing Documents and Recordings

Signed and dated this day of 2019.

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Chair

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1. Introduction

- 1.1 These rules apply to Board disciplinary and appeals hearings. They are to be read in conjunction with and are subject to the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations), the Board’s Complaints and Inquiry Procedures and the Board’s Appeal Hearing Procedures.
- 1.2 For the purposes of these rules “Board file” means a collection of documents in the custody or control of the Board that relate to a disciplinary or an appeal hearing including any prehearing matters and “document” means any written audio or visual material in the custody or control of the Board that relates to a proceeding before it whether or not it is kept on a Board file.
- 1.3 These rules do not affect the Board’s inherent power to control its own proceedings or, on its own initiative or on request, direct that decisions, orders, documents, or files of any kind may be accessed only with the permission of the Board.

2. Rights of Persons Appearing

- 2.1 A respondent, appellant, complainant, or witness and their lawyers may, under the direction of the Registrar or a person appointed by the Registrar obtain a copy of any part of the Board file or any document relating to the proceeding on paying the reasonable costs of the production of a copy except that an electronic record of a hearing may only be provided with the permission of the Presiding Member of that hearing.
- 2.2 A request for access to Board files or documents must be made in writing and must provide sufficient particulars of the document to enable the Registrar to identify it and the person’s reasons for asking to access.

3. Rights of Other Persons

- 3.1 This rule applies to persons who are not entitled to access under rule 2 above.
- 3.2 A person may ask to access any document by providing the Registrar with a letter, an email, or any other written form of request that:
- identifies the person and gives the person’s address;
 - sets out sufficient particulars of the document to enable the Registrar to identify it;
 - gives reasons for asking to access the document, which must set out the purpose for which the access is sought; and
 - sets out any conditions of the right of access that the person proposes as conditions that he or she would be prepared to meet were the presiding Member to impose those conditions (for example, conditions that prevent or restrict the person from disclosing the document or contents of the document).

- 3.3 The Presiding Member in respect of the document may grant a request for access under this rule in whole or in part:
- (a) without conditions; or
 - (b) subject to any conditions that the Presiding Member thinks appropriate; or
 - (c) refuse the request; or
 - (d) refer the request to a Registrar for determination by that Registrar.
- 3.4 In determining a request for access, the Presiding Member must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request:
- (a) the orderly and fair administration of justice;
 - (b) the right of a respondent or appellant to a fair hearing;
 - (c) the right to bring and defend complaints without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice;
 - (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person;
 - (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, hearings and decisions);
 - (f) the freedom to seek, receive, and impart information;
 - (g) whether a document to which the request relates is subject to any restriction; or
 - (h) any other matter that the Presiding Member thinks appropriate.
- 3.5 In applying Rule 3.4 the Presiding Member will have regard to the following:
- (a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited;
 - (b) during the substantive hearing, open justice has greater weight than at other stages of the proceeding and greater weight in relation to documents relied on in the hearing than other documents; and
 - (c) after the substantive hearing, open justice has greater weight in relation to documents that have been relied on in a decision than other documents, but the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.