



Consultation on Information Management initiatives at the Board

July 23, 2024

As part of its modernization efforts and to align with the Government of Canada's best practices, the Board is currently reviewing its Information Management practices. Part of this exercise involves updating the Board's file plan and retention periods for materials, including sending archival information no longer of business value¹ to Library and Archives Canada (LAC). In parallel, the Board is planning to update the status of historical commercial information, once, but no longer, considered sensitive, confidential, or highly confidential.

Board File Plan and Retention Schedule

The Board is updating its File Plan and Retention Schedule. Case files for tariffs, individual cases and unlocatable copyright owners will be kept at the Board for 30 years after the closing of the case.

Case Files

Library and Archives Canada has identified a selection of case files for tariffs and individual cases, including case files for inaugural tariffs, and files that were appealed to the Federal Court of Appeal or the Supreme Court of Canada, to be Information Resources of Enduring Value². This means that these files will be transferred to LAC to be stored permanently. In some situations, a case file for the second approved tariff may also be sent to LAC, if it is considered to have additional substance that may be of greater interest than the first case file for that approved tariff. Case files not transferred to LAC will be destroyed 30 years after the case is closed, unless the Board decides that a particular case file has continuing business value.

The decisions and reasons for all cases will be transferred to LAC.

Unlocatable Copyright Owner files

For the unlocatable copyright owner files, only the decisions and reasons will be transferred to LAC.

¹ **Information resources of business value:** Are published and unpublished materials, regardless of medium or form, that are created or acquired because they enable and document decision-making in support of programs, services and ongoing operations, and support departmental reporting, performance and accountability requirements. Taken from: The archived *Directive on Recordkeeping Appendix*, available at <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=16552>

² **Information Resource of Enduring Value:** Information resources that have long-term importance and relevance to Canadian society. For example, government records that have historical or archival value. Taken from: *Procedure for the Transfer of Unpublished Information Resources of Enduring Value from Government of Canada Institutions to Library and Archives Canada*, available at <https://library-archives.canada.ca/eng/services/government-canada/information-disposition/managing-government-records/guidelines-information-management/Pages/procedures-transfer-unpublished.aspx>

Agreements filed pursuant to Sec.76 of the Copyright Act (formerly Sec. 70.5)

Agreements filed pursuant to section 76 of the Act (formerly Sec. 70.5) will be kept for 30 years (from the date of filing). Once the retention period is reached these records will be destroyed, as LAC has not identified these records as having enduring value.

Information about transfer to LAC

In Fiscal Year 2023-24, the Board sent the Copyright Appeal Board records to LAC, except certain materials on litigation hold. Copyright Appeal Board records at LAC will be available in the fall 2024. To consult LAC's database on these records, [search here](#). Note that access to LAC records requires a user to [sign up for a user card](#) that will allow ordering and consulting of the Copyright Appeal Board records in-person.

The Board is currently preparing the first transfer of Copyright Board records (1989-1994) to LAC. A note will be posted on the "What's New" section of our website when the transfer is completed, and again when the records are available for consultation.

Digital originals

As begun in October 2020, the Board will continue to maintain digital records only. In certain situations, parties are expected to provide paper copies, such as when filing their case records. This practice keeps the records in their original form, allows ease of search, and helps to decrease the physical footprint of the Board.

Desensitization of historical commercial information

The Board is interested in hearing from parties and the public regarding the policy recommendation set out below, and whether there may be any concerns with beginning to apply this policy in September 2024. Please send any comments or concerns about the proposed policy to secretariat@cb-cda.gc.ca no later than **Friday, August 23, 2024**.

Summary of the Recommendation

In order to further the objectives of open government and open court, commercial information that is older than 30 years and contained in the Board's case files will no longer be treated as confidential or highly confidential.

Context

During our work on preparing records for transfer to LAC, it became evident that without this action, certain parts of case files would not be available to the public for the foreseeable future.

The Board is of the view that the sensitive nature of commercial information that was provided in proceedings becomes less sensitive with the passage of time. Officially adopting this policy to recognize the desensitized nature of previously sensitive commercial information meets the sound management and transparency goals of the Board, and aligns with information management best practices to not unduly restrict access to information.

Proposed policy statement

In order to further the objectives of open government and open court, for the purposes of s. 20 of the *Access to Information Act*, and similar purposes, commercial information that is contained in the Board's case files and older than 30 years will be considered by the Board as:

- a) not being confidential (s. 20(1)(b));
- b) not being of a nature such that its disclosure could reasonably be expected to cause economic or material harm or prejudice the competitive position of a third party (s. 20(1)(c)); and
- c) not being of a nature such that its disclosure could reasonably be expected to result to interfere with contractual or other negotiations of a third party (s. 20(1)(d)).

For greater certainty, this policy applies even to information that was characterized by the Board or third parties as being confidential, highly confidential, sensitive, or similarly identified or treated.

This downgrading of the classification of records will be identified for material transferred to LAC. Personal information provided in sensitive, confidential or highly confidential documents in a case file and/or transcripts will continue to require Access to Information and Privacy (ATIP) clearance.

This policy does not apply to information that is not contained in a case file.

Comments or Concerns?

Thank you for your interest. The Board looks forward to receiving your comments by **Friday, August 23, 2024** at secretariat@cb-cda.gc.ca.