

## Purpose

1. The purposes of this Policy are:
  - a) To provide a right of access to certain information under the control of Tarion Warranty Corporation (“Tarion”) in accordance with the principles that,
    - i. reasonable information should be available to the public, and
    - ii. exemptions from the right of access should be limited and specific; and
  - b) To protect the privacy of individuals with respect to personal information about themselves held by Tarion and to provide those individuals with a right of access to that information.
  
2. Tarion is the organization mandated by the Ontario Government to administer the *Ontario New Home Warranties Plan Act*. This document establishes policy and practices regarding information in the custody and control of the Tarion Warranty Corporation (Tarion), including:
  - a) Access to information contained in existing documents collected or maintained by Tarion in the administration of its statutory mandate, including personal information;
  - b) The protection of *personal information*, including the protection of *personal information* of Tarion employees;
  - c) The collection, use and disclosure of personal and other information by Tarion in the administration of its statutory mandate; and
  - d) Effective and timely procedural remedies concerning the handling of personal and other information collected by Tarion in the administration of its statutory mandate.

## Application – Regulatory Activity

3. This Policy applies to information including *personal information* collected, used or disclosed by Tarion in the course of Tarion’s administration of the *ONHWP Act*.

## Definitions

4. In this Policy:

*access* means access by an individual or an organization to a *record* of information in the custody of Tarion and under the control of Tarion.

*bulk data* means *records* requested in bulk or selective form that do not contain personal information and may have commercial value.

*control* means the power or authority to make a decision about the use or disclosure of the *record*.

*custody (of a record)* means the keeping, care, watch, preservation or security of the *record* for a legitimate business purpose.

*enforcement* means:

- a) Policing
- b) Investigations, deliberations or inspections that lead or could lead to proceedings in a court or tribunal of Tarion or other provincial and federal enforcement bodies;
- c) Compliance with regulatory requirements; or

d) The conduct of proceedings referred to in clause (b)

*frivolous and vexatious  
(requests)*

means any request for information instituted, for example, without any reasonable ground; whose purpose is not legitimate, 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 the previously addressed issue; or is made in bad faith; or, a speculative and/or indiscriminate demand for information without any reasonable grounds to identify an expected outcome.

*ONHWP Act*

means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 and the regulations under that Act, as amended from time to time.

*personal Information*

means a *record* of 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.

*public Information*

means a *record* that Tarion has published on its website at [www.tarion.com](http://www.tarion.com) or Tarion has otherwise determined is necessary to make available to the public in order to carry out its administration of the *ONHWP Act*.

*record*

means any *record* of information, however recorded, in the custody and control of Tarion as a result of administration of the *ONHWP Act* by Tarion.

*Registrar*

means the Registrar as that term is defined in the *ONHWP Act*.

- third party* means any person whose interests might be affected by disclosure other than the person making a request for access.
- Tarion* means Tarion Warranty Corporation, the corporation designated to administer the *ONHWP Act*.

## Accountability

5.1 The *Registrar* shall have accountability for all decisions to release or not release *records* and otherwise the administration of this Policy.

5.2 The *Registrar* may delegate some or all of his or her powers and responsibilities under this Policy to the Privacy Officer or other designate. Any decision of any such delegated person shall be deemed to be a decision of the *Registrar*.

5.3 Tarion has a designated Chief Privacy Officer who is accountable for issues relating to privacy and *personal information*; and such other responsibilities as may be delegated by the *Registrar*. The contact information for Tarion's Chief Privacy Officer is as follows:

Chief Privacy Officer  
Tarion Warranty Corporation  
5160 Yonge Street, 12<sup>th</sup> Floor  
Toronto, ON, M2N 6L9

Phone: 416-229-9200  
Fax: 416-229-3845  
Toll Free: 1-877-982-7466  
E-mail: [privacyofficer@tarion.com](mailto:privacyofficer@tarion.com)

5.4 The ongoing collection and processing of information may be the responsibility of other individuals within Tarion.

5.5 Although Tarion takes reasonable steps to ensure the accuracy of the information provided under this Policy, it does not warrant or otherwise guarantee that the information is complete, accurate and/or up-to-date.

## Access to Records

- 6.1 Subject to the exemptions and provisions of section 11 and so long as the information does not fall within the exemptions in this Policy, every person has a right of access to:
- i. His or her own *personal information*,
  - ii. Information relating to the warranty on the home owned by that person at the relevant time; and
  - iii. To *public information* that in each case is in the *custody and control* of Tarion.

Unless the Registrar is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

## Retention and Security of Personal Information

- 7.1 The *Registrar* shall ensure that reasonable measures respecting the *records* containing personal information are developed and put into place to preserve *personal information* in its *custody and control*.

## Public Safety

- 8.1 Despite any provision of this Policy, the *Registrar* may, as soon as practicable, disclose any *record* to the public or persons affected if the *Registrar* has reasonable and probable grounds to believe that it is in the public interest to do so and that the *record* reveals a grave environmental, health or safety hazard to an individual or the public.
- 8.2 Before disclosing a *record* under section 8.1, and subject to section 10.3, the *Registrar* shall make reasonable efforts to give notice to any person to whom the information in the *record* relates, if it is practicable to do.
- 8.3 Any notice given under this section must include a statement that if a person makes representations forthwith to the *Registrar* as to why the *record* or part

thereof should not be disclosed, those representations will be considered by the *Registrar*.

## Access Requirements and Procedure – Public Information

- 9.1 Tarion shall ensure that the public has ready access to *public information*. The information shall be available in various mediums for review, consistent with the *ONHWP Act*, and where practicable, be posted on Tarion's website. Tarion's information materials, including its website, shall provide instructions on how the public can contact Tarion to obtain access to *public information*.
- 9.2 Tarion shall support access to information by disseminating *public information* as is required and relevant to its administration of the *ONHWP Act*.

## Access Requirements and Procedure – Other Records

- 10.1 Within a reasonable period of time of receipt of a written request for the requester's own *personal information* or the warranty information of the requester's home, having regard to the nature of the information requested, Tarion shall, subject to the exemptions and provisions of section 11 of this Policy, provide the individual with access to the *record* requested.
- 10.2 Where an individual requests access to *records* that pertain to individuals or organizations other than the requester, this is considered a *third party* request for information. Requests for *access* to information by *third parties* shall be provided in the form established by Tarion. The written request shall include sufficient information to allow Tarion to identify and authenticate the identity of the requester and his or her *personal information*.
- 10.3 Where Tarion is considering disclosing a *record* that contains *personal information* to a *third party*, Tarion shall notify the affected individual in writing, prior to the disclosure, that his/her *personal information*, or portions thereof, is disclosable unless such notice will interfere with law enforcement. The affected individual will then be given a reasonable period of time to contest the disclosure. In so doing, the individual must provide sufficient written reasons for his or her objection to the disclosure.

- 10.4 Where access is refused, Tarion shall provide written reasons for the refusal to the requester, if the request has been made in writing.
- 10.5 Before proceeding with any access request, and as per section 15 of this Policy, Tarion shall provide the requester with the approximate cost, if any, of responding to the request, and then confirm whether the requester still wishes to proceed with the access request, or whether the request is to be withdrawn.

## Exceptions to Disclosure

- 11.1 Mandatory Exceptions: Subject to sections 11.4 and 11.5 of this Policy, Tarion shall refuse a person access to a *record* where the *record* or part of the *record*:
- a) Could reveal *personal information* about another person, unless the other person consents to the access,
  - b) Could reveal confidential financial information of one or more of Tarion's registrants or applicants for registration (or principals, officers, directors, employees, agents, guarantors or indemnitors of such registrants or applicants), and/or
  - c) Is a building permit or building permit application received by Tarion pursuant to law or an agreement with a municipality.

Unless: disclosure is required by law, the information is already public, or disclosure is appropriate in litigation or regulatory proceedings, or with the consent of the individual or entity to which the information relates.

- 11.2 Discretionary Exemptions: Subject to sections 11.4 and 11.5 of this Policy, Tarion may refuse access to a *record* where giving access to the *record* or part of the *record*:
- 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 may compromise (i) an investigation or enforcement activity of Tarion, or (ii) an investigation or review of licensing issues for a vendor or builder.
- c) may contain bulk data, or other sensitive aggregate data;
- d) may reveal advice, recommendations or information provided by a Tarion employee, any person employed by or in the service of Tarion or a consultant to Tarion;
- e) may have been generated in the course of a dispute resolution process, including consumer/individual complaints;
- f) may reveal information collected without knowledge or consent and for purposes related to an investigation as permitted by the exception under section 12.7;
- g) may be refused under the exemptions described in subsection 14 (1) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter F.31, or may be a report prepared in the course of law enforcement, an inspection or an investigation
- h) may not be in the public interest or could reasonably be expected to threaten the life, health or security of an individual;
- i) may reveal commercial, scientific, proprietary, technical, financial or labour relations information of Tarion or of any individual, entity or third party that has supplied the *records* to Tarion in confidence, whether explicitly or implicitly.
- j) may reveal the substance of deliberations by one or more of the following: Tarion's Board of Directors, (including its committees, sub-committees and task forces), Tarion's Committees or Corporate Leadership Team or other managers. Exempt information may include, but is not limited to: agenda, minutes, notes of participants, policy options and analysis, advice from staff or an external consultant, and advice to government.

- k) may be unreasonably costly to provide, taking into account the nature of the request and the volume of documents requested;
  - l) may be for a *frivolous or vexatious* purpose;
  - m) may be information compiled by Tarion or supplied to Tarion for the purposes of risk management or risk informed decision making;
  - n) may reasonably endanger the security of a building or of a system, including an information system or procedure established for the protection of a building or information for which protection is reasonably required;
  - o) may be a report or other information supplied by a government, regulatory or enforcement body to Tarion in confidence, whether explicitly or implicitly;
  - p) may be information provided in response to a request for proposal (RFP), a request for quotation (RFQ) or other similar purpose; and
  - q) may be information that could be reasonably expected to prejudice the financial interests of Tarion;
  - r) may be proposed plans, policies or projects of Tarion 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 or other entity.
  - s) may violate a provision of the *ONHWP Act*.
- 11.3 Despite sections 11.1 and 11.2, Tarion may release a *record* where section 8.1 applies.
- 11.4 Where information that is exempted from an *access* request can be reasonably severed from that part of the *record* with which the *Registrar* has determined to be disclosed, Tarion may sever 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.

11.5 Despite Section 11.4, the *Registrar* may determine that disclosure of the entire *record* which are subject to the following exceptions, may be refused where any of the following exceptions apply to any part of the Record:

- a) was collected without knowledge or consent for purposes related to an investigation as permitted by the exception under section 12.7 of this Policy; or
- b) is information that falls within the exceptions in s. 11.2 (a), (b), (d), (e), (f), (g), (h), (j), (p), (o) or (s).

11.6 Despite any provisions in this Policy, the *Registrar* may refuse to confirm or deny the existence of a *record* to which subsections 11.2 (a), (b), (f), (g), (h), (l), (p) (o) and/or section 11.5 apply.

## Collection and Privacy of Personal Information

12.1 Collection of *personal information* shall be limited to that which is necessary for the carrying out of Tarion's administration of the *ONHWP Act* and to fulfil its consumer protection and regulatory mandate.

12.2 Tarion may collect *personal information* from prospective new home buyers and new home owners when they request Tarion's assistance with disputes with builders or vendors or when they make warranty claims under the *ONHWP Act*. The primary purpose of collecting this information is to assess whether an individual has a valid warranty claim or complaint, to provide information regarding the individual's rights and responsibilities, to investigate and conciliate disputes between the individual and the builder or vendor and to process payments to or from the individual.

12.3 Tarion also collects *personal information* from existing and prospective new home builders and vendors who apply for registration or renewal of registration under the *ONHWP Act*, as well as associated individuals such as, principals, officers, directors, guarantors and indemnitors. The primary purposes of collecting this information are to determine if the applicant is qualified for registration under the *ONHWP Act*, to process payments to and from an individual, builder, vendor or

indemnitor to address security and underwriting considerations, and to ensure that the *ONHWP Act* is being complied with.

- 12.4 By providing Tarion with *personal information*, an individual consents to its use and disclosure in accordance with this Policy. As well, such consent may be implied through the individual's conduct with Tarion.
- 12.5 Subject to the exception set out in section 12.7 of this Policy, where Tarion collects *personal information*, it shall,
- 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 his or her the consent for its collection, use and disclosure by Tarion for that purpose.
- 12.6 Subject to section 12.7 of this Policy, Tarion shall document the purpose for which *personal information* is collected and shall specify whether the *personal information* is being collected for the purpose of administration of the *ONHWP Act* by Tarion.
- 12.7 Where *personal information* is collected for the purposes of the administration of the *ONHWP Act*, Tarion may collect the information without the knowledge or consent of the individual to whom the information relates, and/or communicating the purpose of the collection, if such collection is necessary for the administration of the *ONHWP Act*.

## **Use and Disclosure of Personal Information**

- 13.1 Subject to the exceptions set out under section 11 and subsection 13.2 of this Policy, Tarion shall use *personal information* only for the purposes for which it was collected and/or disclosure of such *personal information* with the consent of the individual to whom the information relates.
- 13.2 Tarion may use or disclose *personal information* without the consent of the individual, or for purposes other than those for which it was collected, if:

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- a) the information is used or disclosed for purposes related to ongoing investigation and enforcement activity of Tarion pursuant to the *ONHWP Act*;
- b) as may be required in connection with the administration of the *ONHWP Act*;
- c) if requested by government or law enforcement agencies;
- d) to a ministry, department or agency of a government engaged in the administration of legislation similar to the *ONHWP Act* or legislation that protects consumers or to any other entity to which the administration of legislation similar to the *ONHWP Act* or legislation that protects consumers has been assigned, as authorized under the *Regulatory Modernization Act, 2007, S.O. 2007, c. 7*;
- e) it is necessary to protect the rights, privacy, safety or property of an individual or a group, or a registrant;
- f) for the purpose of establishing or collecting a debt owed to Tarion;
- g) the information is subject to an agreement Tarion has entered into with a third party consultant or service provider to manage or use Tarion *records* on its behalf, if such agreement requires the third party to comply with this Policy and have in place security safeguards comparable to those used by Tarion;
- h) if required by law or pursuant to a court order;
- i) as may be required in connection with a proceeding under the *ONHWP Act* or in connection with the administration of the *ONHWP Act*;
- j) it is disclosed for the purpose for which it was obtained or for a consistent purpose;
- k) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- l) the information is to his or her counsel or to Tarion's counsel; or
- m) the information is publicly available.

## Retention and Security of Personal Information

- 14.1 Having regard to the level of sensitivity of the particular information, Tarion shall take all reasonable steps to ensure that *personal information* is kept secure from loss and theft.
- 14.2 Tarion shall retain *personal information* in accordance for a minimum of one (1) year and only for as long as necessary to fulfil the purpose for which the information was collected; however, *personal information* that is the subject of an *access* request shall be retained for as long as necessary to allow the requester to exhaust any recourse under this Policy within a reasonable time after this Policy comes into force.
- 14.3 Tarion shall develop procedures and practices to govern the period of time *personal information* is retained, and the methods by which it should be destroyed, erased or made anonymous once no longer required by Tarion.
- 14.4 Tarion shall publicly post on its corporate website such procedures and practices in the form of a Retention Policy.
- 14.5 Ongoing access to *personal information* under the control of Tarion shall be restricted to appropriate Tarion staff. Tarion shall adopt appropriate security mechanisms to prevent the unauthorized access, disclosure, use, copying or modification of *personal information* under its *custody and control*.
- 14.6 Where an individual disagrees with the accuracy of *personal information* about him/herself held by Tarion, the individual has the right to challenge the accuracy and have it addressed as follows:
  - a) Individuals solely requesting corrections to their *personal information* in order to ensure its accuracy and/or completeness shall send their requests in writing to Tarion's Chief Privacy Officer at the contact information provided in section 5.3 of this Policy. The request must include sufficient detail to identify the applicable personal information and the correction being sought.
  - b) Individuals who are requesting access to *personal information* before requesting corrections, must first make an access request in writing to

Tarion's Chief Privacy Officer at the contact information provided in section 5.3 of this Policy, to determine what *personal information* can be released, and which is exempt from release under the criteria set out in the Policy. Once this process is complete, Tarion can continue processing the correction request.

Tarion shall respond in writing to a request for correction(s) or amendment(s) to personal information within a reasonable number of days after receiving the request, unless there are special circumstances.

14.7 Where Tarion agrees to correct or amend a *record of personal information*:

- a) Amendments or corrections to *personal information* received from the individual to whom it relates shall be recorded by Tarion as soon as practically possible, and
- b) Tarion 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 Tarion.

14.8 If an individual's request for a correction or amendment is refused, the reasons for such refusal shall be provided in writing to the individual to whom the information pertains, and Tarion will 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 Tarion.

14.9 Tarion 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 Tarion;
- b) Tarion 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 process of Tarion including, but not limited to, an inquiry, investigation or hearing;

- 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 belongs to someone else and will eventually be returned to that person; or
- f) correction or amendment is prohibited by a law.

## **Fees**

- 15.1 A person who makes a request for access to a *record* shall pay fees in accordance with Tarion's fee policies.
- 15.2 *Personal information* shall be made available to the person to whom the information relates at a fee as set and published by Tarion.
- 15.3 Documents that are not limited to *personal information* of the requestor, other than *bulk data*, shall be made available to the requester at a cost that reflects the total cost of providing the information. The cost of providing *bulk data* shall be determined on a case by case basis. In determining fees, Tarion shall make an effort to be consistent and base costs on publicly available criteria.
- 15.4 Any fee estimate for the production of *records* exceeding \$100 will require the requester to provide at 25% deposit before processing of the request will commence.

## **Complaints and Remedies**

- 16.1 Tarion shall develop and implement procedures and practices establishing a mechanism to deal with complaints regarding the release of records and *personal information* or the refusal to release such records to a Requester. If a complaint is found justified, Tarion shall take appropriate measures to rectify the problem, including where necessary, amending its procedures and practices.

## Administration

- 17.1 Tarion shall implement policies and practices required to give effect to this Policy, as soon as practicable, including those relating to,
- a) the procedure for receiving and responding to requests, complaints or injuries, and the form requests and complaints should take;
  - b) advising Board members, management and staff about the Policy, and providing appropriate training to ensure compliance with the Policy's provisions; and
  - c) the development of documentation describing this Policy and its related procedures and practices.

## Interpretation

- 18.1 In the event that this Policy conflicts with the *ONHWP Act* and any other applicable legislation, the *ONHWP Act* and applicable legislation shall prevail.

## Effective Date and Review

- 19.1 This Policy comes into effect on April 1, 2017 and applies to *records* received by or created by Tarion after that date.
- 19.2 Tarion shall initiate from time to time a review of this Policy and related policies and practices. If changes are made to this procedure, they will be posted on Tarion's website at [www.tarion.com](http://www.tarion.com).

## **Schedule A: Tarion Warranty Corporation Privacy Policy for Building Permit Information**

### **Definitions**

“BP Information” means any building permit information that is personal information about an identifiable individual transmitted by municipalities to Tarion either electronically or otherwise pursuant to section 8 (8.1) of the *Building Code Act, 1992* (Ontario).

“Tarion” means Tarion Warranty Corporation or any designated successor or entity which administers the *Ontario New Home Warranties Plan Act*.

### **Accountability**

Tarion will manage BP Information in accordance with its privacy policy including this Schedule. Tarion has designated a Privacy Officer who is responsible for advising the organization on matters relating to compliance with Tarion’s privacy policy and the matters noted in this Schedule. The contact information for Tarion’s Privacy Officer is shown on [Tarion’s website](#).

The ongoing collection and use of BP Information will also be the responsibility of other individuals within Tarion, for example, members of Tarion’s Compliance and Investigations group and Information Services group. All Tarion employees will be required to abide by Tarion’s privacy policy and this Schedule in connection with BP Information.

### **Purpose**

BP Information shall only be collected and used by Tarion for purposes of law enforcement under the *Ontario New Home Warranties Plan Act* including in connection with the related inspections, investigations and prosecutions.

### **Disclosure of BP Information**

Tarion may use BP Information without prior consent or knowledge of the individual to whom the information relates, if:

- BP Information is used for purposes relating to ongoing investigation or enforcement activity of Tarion under the *Ontario New Home Warranties Plan Act*;

- Disclosure is made pursuant to a written agreement between Tarion and the third party, if such third party needs the information in order to assist with ongoing investigation or enforcement activity of Tarion under the *Ontario New Home Warranties Plan Act*. The agreement shall require the third party to comply with Tarion's policies relating to BP Information and to have placed security safeguards comparable to those used by Tarion;
- Tarion is required by law to disclose such BP Information; and/or
- Failure to disclose such BP Information could reasonably be expected to threaten life, health or security of an individual.

## **Use of BP Information**

Tarion may use BP Information without prior consent or knowledge of the individual to whom the information relates, if:

- BP Information is used for purposes relating to ongoing investigation and enforcement activity of Tarion pursuant to the *Ontario New Home Warranties Plan Act*;
- A third party may use BP Information pursuant to a written agreement between Tarion and the third party, if such third party needs the information in order with ongoing investigation or enforcement activity of Tarion under the *Ontario New Home Warranties Plan Act*. The agreement shall require the third party to comply with Tarion's policies relating to BP Information and to have placed security safeguards comparable to those used by Tarion.

## **Access to BP Information**

Subject to the permitted disclosure noted above, BP Information will not be disclosed to the public generally but will be available to the individual to whom it relates at minimal or no cost.

Individuals requesting BP Information which relates to them will be directed to the Privacy Officer who will guide them through the steps required to obtain such BP Information.

If for any reason Tarion releases BP Information contrary to the terms of this Schedule, Tarion will use reasonable efforts to contact individuals affected, advise them of the circumstances and take reasonable steps to retrieve such BP Information.

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An individual to whom the BP Information may relate will be entitled to address a challenge concerning compliance with the privacy policies relating to BP Information to Tarion's Privacy Officer.

## **Safeguards**

Subject to the disclosure provisions noted above, BP Information shall be protected by the following security safeguards:

- BP Information will only be available to employees of Tarion who require the information in order to perform their duties;
- BP Information in an electronic format will be received directly to a database accessible only by Tarion's Compliance and Investigations group and Information Systems personnel;
- BP Information in a hard copy format will be received, opened and stored by Compliance and Investigations personnel.

Tarion will take all reasonable steps to ensure that BP Information is kept secure from loss and theft.

## **Retention of BP Information**

BP Information may be stored in electronic format or in hard copy format.

BP Information will be destroyed or deleted no later than three years from receipt of such BP Information unless such BP Information becomes the subject of an enforcement proceeding, in which case it will be destroyed no later than six months following completion of such proceeding or any appeal from that proceeding.