



October 21, 2015

*[CB-CDA 2015-060]*

**File: Access Copyright – Post-Secondary Educational Institutions Tariff  
(2011-2013 and 2014-2017)**

## **ORDER OF THE BOARD**

### **ORDER DEALING WITH INFORMATION FOR WHICH CONFIDENTIAL TREATMENT MAY BE CLAIMED**

1. In this order,

“confidential information” mean information that a supplier believes is so sensitive that its disclosure to persons other than those authorized pursuant to this order would reasonably be expected to result in injury to the supplier or to the person who supplied the information to the supplier;

“confidentiality agreement” means the agreement set out in the Appendix to this order;

“highly confidential information” means information that a supplier believes is so commercially sensitive that disclosure to persons other than counsel of a party or the external expert of a party would reasonably be expected to result in injury to the supplier;

“recipient” means a participant to this proceeding who receives information from a supplier;

“supplier” means a participant to this proceeding who supplies information to another participant as part of the proceeding.

2. This order applies to information that a supplier designates as confidential information or highly confidential information.

3. Counsel to the recipient (or “the recipient”, if unrepresented) shall execute and deliver the confidentiality agreement to counsel to the supplier (or “the supplier”, if unrepresented).

4. Information subject to this order shall be disclosed only to persons authorized pursuant to this order.

5. Subject to paragraphs 7 and 8, confidential information shall be provided to counsel to the recipient (or the recipient, if unrepresented), who may disclose it to no one except:

(a) if the recipient is represented, a member of counsel's staff;

(b) a person retained by the recipient as an expert or consultant (other than a director or employee of a participant) for the purposes of this proceeding, and that person's staff; and

(c) not more than five representatives of the recipient to be designated by each recipient. Such a person may be a director or employee of the recipient and should, if possible, be a member of the Bar.

6. Subject to paragraphs 7 and 8, highly confidential information shall be provided by the supplier to counsel to the recipient who may disclose it to no one except: counsel's staff and the recipient's external experts and their staff. External experts and their staff shall not disclose the highly confidential information to any other person.

7. No information that is subject to this order may be disclosed to a person unless and until that person has executed and delivered the confidentiality agreement to counsel to the supplier (or the supplier, if unrepresented).

8. The executed confidentiality agreement referred to in paragraph 7 must be delivered to counsel to the supplier (or the supplier, if unrepresented) three clear working days before any information subject to this order is disclosed. The supplier may, within that time, object to the disclosure of information to the person who has signed the agreement. The supplier may waive the objection period by informing the recipient. If an objection is made, no information subject to this order shall be disclosed to the person until the Board has ruled on the objection.

9. All documents containing confidential information shall be printed on white paper with confidential information highlighted in yellow and highly confidential information highlighted in blue. Where an entire page is either confidential or highly confidential, that page only may be printed on yellow paper or blue paper, respectively, and the balance of the document shall be printed on white paper.

10. Anyone who intends to use, during the proceeding, information subject to this order or any summary, aggregations or reproduction, in whole or in part, of such information shall attempt to agree with the supplier on a manner in which the information may be put into the public record or, alternatively, on a form that, though it may require confidential treatment, will minimize the risks and difficulties associated with dealing with the information. Any confidentiality claim relating to information intended to be used during the proceeding, including information subject to this order, shall be dealt with pursuant to the directive on procedure applicable to the proceeding.

11. Where information subject to this order may be conveniently aggregated with similar information provided by others, it shall not be a breach of this order for the recipient to aggregate the information and to provide the aggregated results to all the suppliers who provided the disaggregated information, on the condition that all those who supplied the disaggregated

information consent to the aggregated information being provided to others. The recipient's use of the aggregated information shall be governed by paragraph 10.

12. All information that is subject to this order shall be destroyed within 30 days following completion of this proceeding, including any applications for judicial review and any appeals therefrom, except where required by statute or regulation to be retained, or where retained pursuant to paragraphs 13 or 14.

13. Counsel to a recipient may retain in counsel's confidential files part or all of the information subject to this order, and any materials derived therefrom, after the proceeding is completed.

14. A person may retain in that person's confidential files any material prepared by or for that person which does not replicate the information subject to this order but which, if itself disclosed, could lead indirectly to the disclosure of the information subject to this order. Such material shall be subject to this order until it is destroyed.

15. This order is subject to further direction of the Board. Consequently, anyone who is of the view that this order is inappropriate for dealing with any information subject to this order, or that a supplier's designation of information as confidential or highly confidential under this order is inappropriate, may apply for further direction from the Board.

16. It can be expected that at the hearing of this matter, a witness and/or counsel may wish to refer to the highly confidential information orally. If during the oral hearing, counsel or a witness intends to refer to highly confidential information, counsel shall advise the Board panel in advance in order to seek a ruling on how the highly confidential information shall be dealt with during the hearing.

A handwritten signature in black ink, appearing to read 'Gilles McDougall', written in a cursive style.

Gilles McDougall  
Secretary General

**APPENDIX**

**COPYRIGHT BOARD**

**CONFIDENTIALITY AGREEMENT**

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IN CONSIDERATION of being provided with information in connection with this proceeding over which claims for confidentiality have been advanced, I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, agree to maintain the confidentiality of that information. I shall not copy or disclose it to anyone other than a person authorized pursuant to the Copyright Board’s Order of October 21, 2015 (the “Order”) nor shall I use it for any purpose other than in connection with this proceeding.

I have read the Order, a copy of which is attached hereto, and agree to be bound by it. I acknowledge and agree that any breach of this agreement shall be considered to be a breach of the Order. I also acknowledge and agree that the person who supplied the information may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that the person shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce its terms and provisions, in addition to any other remedy to which the person may be entitled at law or in equity.

Once the proceeding, including all appeals, is completed, I may retain in my confidential files any material prepared by or for me which does not replicate the confidential information or the highly confidential information, but which if itself disclosed could lead indirectly to the disclosure of the information subject to the Order. All material retained pursuant to this paragraph shall remain subject to the Order until such material is destroyed. I shall destroy all other information that is subject to the Order within 30 days of the proceeding being completed unless the Board orders otherwise.

I hereby submit to the jurisdiction of the Copyright Board of Canada and the Federal Court of Canada for the purposes of this agreement and the Order and any necessary enforcement or injunction proceedings.

Signed, sealed and delivered before a witness this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

Relationship to Recipient (as defined in the Order) \_\_\_\_\_

\_\_\_\_\_  
(Print Name – Witness)

\_\_\_\_\_  
(Signature – Witness)