

1 Overview

- 1.1 Tarion is the not-for-profit corporation mandated by the Lieutenant Governor in Council to administer the *Ontario New Home Warranties Plan Act*. This document establishes policy and practices regarding information in the *custody* and *control* of Tarion, including:
- a) access to information collected or maintained by Tarion in the administration of its statutory mandate, including *personal information*;
 - b) protection of *personal information* and *confidential information*;
 - c) collection, use and disclosure of personal and other information by Tarion in the administration of Tarion's 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.
- 1.2 Although the *Freedom of Information and Protection of Privacy Act* does not apply to Tarion, Tarion is committed to the principles of promoting transparency of, and accountability for, its regulatory activities, while also ensuring the protection of *personal information* and *confidential information*.
- 1.3 Tarion is required under the *ONHWP Act* to share information, including *personal information* and *confidential information*, with the *Minister*, *HCRA* and other prescribed persons. Effective sharing of information between Tarion and *HCRA* will be essential to the fulfilment of their respective mandates and to consumer protection. The access to information provisions and procedures in this Code do not apply to Tarion's sharing of information with the *Minister*, *HCRA* and other prescribed persons, and information sharing procedures will be set out in information sharing agreements between these organizations.

2 Purpose

- 2.1 The purposes of this Code are:
- a) to provide a right of access to information in Tarion's *custody* and *control* in accordance with the principles that:
 - i) information should be available to the public; and
 - ii) exceptions to the right of access should be limited and specific; and
 - b) to protect the privacy of persons with respect to *personal information* and *confidential information* about them in Tarion's *custody* and *control* and to provide them with a right of access to that information.

3 Application

3.1 This Code applies to information, including *personal information* and *confidential information*, collected, used or disclosed by Tarion in the course of Tarion's administration of the *ONHWP Act*.

4 Definitions

4.1 In this Code:

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* or *confidential information* and may have commercial value.

confidential information information of or about an individual or organization that is not publicly available, is the property of the individual or organization, or could reasonably be regarded as confidential by the individual or organization.

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

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

data breach means the loss of, unauthorized disclosure of or unauthorized access to information resulting from a breach of Tarion's technological, organizational or physical security safeguards or from a failure to establish such security safeguards.

enforcement means:

- a) policing;
- b) complaints from the public, or investigations, deliberations or inspections by Tarion or other provincial or federal enforcement bodies that lead or could lead to proceedings in a court or tribunal;
- c) compliance with regulatory requirements; or
- d) the conduct of proceedings referred to in (b).

*frivolous and
vexatious request*

means any request for access to information that, for example: is made without any reasonable ground; has no legitimate purpose 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 a previously addressed issue; is made in bad faith; or is a speculative or indiscriminate demand for information without any reasonable grounds to identify an expected outcome.

HCRA

means the Home Construction Regulatory Authority, the not-for-profit corporation designated by the Lieutenant Governor in Council to be the regulatory authority under the New Home Construction Licensing Act, 2017 responsible for the licensing of Ontario's new home builders and vendors.

Minister

means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of the ONHWP Act is assigned under the Executive Council Act.

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 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 business telephone number of an officer, director or employee of an organization or of an individual acting in a business capacity.

public information

means information that is publicly available, including information that Tarion has published on its website at www.tarion.com or that 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 its administration of the ONHWP Act.

Registrar

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

umbrella group means a group of builders and/or vendors sharing at least one common officer, director, principal or partner.

5 Accountability

- 5.1 The *Registrar* shall have accountability for the administration of this Code, including all decisions regarding access to *records*.
- 5.2 The *Registrar* may delegate some or all of his or her powers and responsibilities under this Code to Tarion's 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 appointed a Privacy Officer to investigate and respond to privacy issues and to be accountable for Tarion's compliance with this Code. Tarion's Privacy Officer may be contacted by email to privacyofficer@tarion.com or by mail to:
- Privacy Officer
Tarion
5160 Yonge Street, 7th Floor
Toronto, ON M2N 6L9.
- 5.4 The ongoing collection, use and management 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 disclosed under this Code, it does not warrant or otherwise guarantee that the information is complete, accurate or up to date.

6 Access to Records

- 6.1 Subject to the *ONHWP Act* and the exceptions in this Code, every person has a right of *access to records* in the *custody* and *control* of Tarion containing the following information:
- a) his, her or its own personal information or confidential information;
 - b) information relating to the statutory warranties on a home purchased, owned, sold or built by that person including, for example, information relating to warranty claims, decisions and compensation;
 - c) information relating to the person's registration, renewal of registration, application for registration, home enrolment, qualifying for home enrolment, or guarantee; and
 - d) public information.

- 6.2 A request for access shall be made in writing to Tarion's Privacy Officer. The request shall include sufficient information to allow the Privacy Officer to authenticate the identity of the person making the request.
- 6.3 Upon receiving a written request for access the Privacy Officer shall, within a reasonable period of time having regard to the volume and nature of the records requested, and subject to the *ONHWP Act* and the exceptions in this Code, provide the person with access to the records requested or written reasons for refusing access.
- 6.4 Where a person requests access to records that contain *personal information* or *confidential information* about a person other than the requester, Tarion shall require the affected person's consent prior to providing access to the requester.

7 Access Requirements and Procedure – Public Information

- 7.1 Tarion shall ensure that the public has ready access to *public information* as is required and relevant to Tarion's administration of the *ONHWP Act*. Tarion shall make *public information* available on Tarion's website and in other ways determined by its Chief Executive Officer in accordance with the *ONHWP Act*.
- 7.2 Tarion shall promote access to information by communicating *public information* as is required and relevant to its administration.

8 Exceptions to Access

- 8.1 Mandatory Exceptions: Subject to section 8.3 of this Code, Tarion shall refuse a person access to a record where the record or part of the record:
- a) could reveal *personal information* or *confidential information* about another person, unless the other person consents to the access;
 - b) is in the *custody* and *control* of the New Home Ombuds Office – any request for such records should be made directly to the New Home Ombuds Office at ombuds@newhomeombuds.ca;
 - c) is a building permit or building permit application received by Tarion pursuant to law or an agreement with a municipality; or
 - d) is a recording of a telephone call made for quality assurance purposes in accordance with Tarion's Call Recording Policy.

unless access is required by law, the information is already *public information*, or access is appropriate in litigation or regulatory proceedings.

- 8.2 Discretionary Exceptions: Subject to section 8.3 of this Code and any applicable legal requirements, Tarion may refuse access to a *record* where providing 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 compromise an *enforcement* activity, including where access may be refused under the exceptions described in subsection 14(1) of the *Freedom of Information and Protection of Privacy Act* if it applied to Tarion;
 - c) may contain *bulk data*;
 - d) may have been generated in the course of a dispute resolution process including, for example, mediation or the handling of a complaint;
 - e) may not be in the public interest or could reasonably be expected to threaten the life, health or security of an individual;
 - f) may reveal commercial, scientific, proprietary, technical, financial, or human resources information of Tarion or of any individual, entity or third party that has supplied the *records* to Tarion in confidence, whether explicitly or implicitly;
 - g) may reveal the substance of deliberations by Tarion's Board of Directors (including its committees, sub-committees and task forces), committees, Corporate Leadership Team or other managers including, but not limited to, agenda, minutes, notes of participants, policy options and analysis, advice or recommendations to or from employees or an external consultant, and advice or recommendations to or from government;
 - h) may be unreasonably costly to provide, taking into account the nature of the request and the volume of *records* requested;
 - i) may be a *frivolous and vexatious request*;
 - j) may be information compiled by Tarion or supplied to Tarion for the purposes of risk management or risk-informed decision making;
 - k) may reasonably endanger the security of a building or system, including an information system or procedure established for the protection of a building or information for which protection is reasonably required;
 - l) may be a report or other information supplied by a government, regulatory or enforcement body to Tarion in confidence, whether explicitly or implicitly;

- m) may reveal procurement information, including information submitted to Tarion in response to a procurement process;
 - n) may reveal information that could reasonably be expected to prejudice the financial interests of Tarion;
 - o) may reveal 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;
 - p) may reveal information about a home that is not owned by the requester; or
 - q) may violate a provision of the *ONHWP Act*.
- 8.3 If information that an *access* request concerns is captured by sections 8.1 or 8.2 and if that information can be reasonably severed or redacted from a *record*, Tarion may sever or redact that information and provide the requester with *access* to the remaining part of the *record* that is otherwise not captured by sections 8.1 or 8.2.
- 8.4 Tarion may refuse to confirm or deny the existence of a *record* to which subsection 8.2 (a), (b), (d), (e), (f), (h), (j), (m) or (n) applies.

9 Collection of Information

- 9.1 Tarion shall limit the collection of *personal information* and *confidential information* to that which is necessary to carry out Tarion's administration of the *ONHWP Act* and to fulfil its consumer protection and regulatory mandate.
- 9.2 Tarion collects *personal information* and *confidential information* from new home purchasers and new homeowners in relation to disputes with or complaints about builders and vendors and in relation to warranty claims made under the *ONHWP Act*. The primary purposes of collecting this information are to assess whether the person has a valid warranty claim or complaint, to provide information regarding the person's rights and responsibilities, to investigate and resolve disputes and complaints, and to process payments to or from the person. To fulfil these purposes, Tarion may disclose *personal information* and/or *confidential information* about a home purchaser or homeowner to the vendor and/or builder of the home and/or to its *umbrella group*.
- 9.3 Tarion collects *personal information* and *confidential information* from new home builders and vendors, and prospective new home builders and vendors, who apply to qualify a home for enrolment or to enrol a home in the Ontario New Home Warranties and Protection Plan, as well as from interested persons such as, principals, officers, directors, guarantors and indemnitors. The primary purposes of collecting this information are to administer the enrolment of homes in the Plan, to process payments to and from the

person, to address security and underwriting considerations, and to ensure compliance with the *ONHWP Act*.

- 9.4 Tarion collects information, which may include *personal information* and *confidential information*, from *HCRA* regarding vendors, builders and other prescribed persons for the purposes of assessing whether a person is entitled to enrol homes under the *ONHWP Act* and to ensure compliance with the *ONHWP Act*.
- 9.5 Tarion may collect information from vendors, builders and other prescribed persons as required by the *ONHWP Act*, including for the purpose of providing that information to *HCRA*.
- 9.6 By providing Tarion with *personal information* or *confidential information*, a person consents to its use and disclosure in accordance with this Code. As well, such consent may be implied through the person's conduct with Tarion.
- 9.7 Subject to the exception set out in section 9.8 of this Code, where Tarion collects *personal information* or *confidential information* it shall,
- a) only collect information directly from the person to whom the information relates, unless the person authorizes another manner of collection; and
 - b) explain to the person the purpose for collecting the information and, at or before the time of collection, obtain his or her consent for its collection, use and disclosure by Tarion for that purpose.
- 9.8 Where it is necessary for the administration of the *ONHWP Act*, Tarion may collect *personal information* and/or *confidential information* without the knowledge or consent of the person to whom the information relates and/or without communicating the purpose of the collection.

10 Use and Disclosure of Information

- 10.1 Subject to the exceptions set out under section 10.2 of this Code, Tarion shall use *personal information* and *confidential information* only for the purposes for which it was collected and shall disclose *personal information* and *confidential information* only with the consent of the person to whom the information relates.
- 10.2 Tarion may use or disclose *personal information* and/or *confidential information* without the consent of the person, or for purposes other than those for which it was collected, if:
- a) the information is shared with the *Minister*, *HCRA* or a prescribed entity in accordance with the *ONHWP Act*;

- b) the information is used or disclosed for purposes related to an *enforcement* activity of Tarion pursuant to the *ONHWP Act*;
- c) it is required in connection with a proceeding under the *ONHWP Act* or in connection with the administration of the *ONHWP Act*;
- d) the information is requested by a law enforcement agency;
- e) the information is requested by 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;
- f) it is authorized under the *Regulatory Modernization Act, 2007*;
- g) it is necessary for the purpose of establishing or collecting a debt owed to Tarion;
- h) it is requested by the counsel of the person to whom the *personal information* relates;
- i) 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 Code and have in place security safeguards comparable to those used by Tarion;
- j) it is required by law or pursuant to a court order;
- k) the information is disclosed for the purpose for which it was obtained or for a consistent purpose;
- l) the information is disclosed to a prescribed entity or organization, if the purpose of the disclosure is consumer protection;
- m) the information is disclosed to the person's counsel or to Tarion's counsel; or
- n) the information is publicly available.

11 Public Safety

- 11.1 Despite any provision of this Code, Tarion may disclose any *record* to the public or persons affected if Tarion 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.

- 11.2 Before disclosing a *record* under section 11.1, Tarion shall make reasonable efforts to give notice to any person to whom the information in the *record* relates, if it is practicable to do.
- 11.3 Any notice given under this section must include a statement that if a person makes representations forthwith to Tarion as to why the *record* or part thereof should not be disclosed, those representations shall be considered by Tarion before Tarion discloses the information in question.

12 Retention and Security of Information

- 12.1 Tarion shall ensure that reasonable measures respecting *records* containing *personal information* and/or *confidential information* are developed and put into place to preserve *personal information* and *confidential information* in its *custody* and *control*.
- 12.2 Tarion shall adopt administrative and security mechanisms to prevent the unauthorized access, disclosure, use, copying or modification of *personal information* and *confidential information* in its *custody* and *control*, including:
- a) taking reasonable steps to prevent theft, loss or misuse of *records*, and to protect them from unauthorized access, modification or destruction;
 - b) implementing physical and organizational protections for paper *records*;
 - c) implementing technological protections for electronic *records*;
 - d) ensuring that all employees, the Board of Directors, committee members, and all consultants or contract workers employed or retained by Tarion have received adequate training to comply with this Code; and
 - e) ensuring that any consultant or service provider retained by Tarion to manage or use Tarion records on its behalf agrees to have security safeguards in place comparable to those used by Tarion.
- 12.3 Tarion shall retain *personal information* and *confidential information* for as long as is necessary to fulfil the purpose for which it was collected or for its use in accordance with this Code, and for 12 months thereafter in order to provide an opportunity for the individual or organization to access their information. A record of *personal information* or *confidential information* may be retained beyond this time period in the following circumstances:
- a) another law requires or authorizes the retention;
 - b) the *record* is reasonably required for Tarion's future regulatory actions; or

- c) the *record* is transferred to storage or archives for historical research or permanent preservation, provided that the information that can identify the person to whom the information relates is removed.

12.4 If a *record* has fulfilled the purposes for which it was collected and is not to be further retained, Tarion shall destroy the *record* as follows:

- a) a paper *record* containing *personal information* or *confidential information*, and all copies, shall be shredded before it is destroyed;
- b) an electronic *record* containing *personal information* or *confidential information* shall be deleted from hardware that hosted the *record*; and
- c) before hardware that hosted electronic *records* is discarded or destroyed, all electronic *records* containing *personal information* or *confidential information* shall be deleted.

12.5 Ongoing access to *personal information* and *confidential information* in the *custody* and *control* of Tarion shall be restricted to appropriate Tarion employees and contract workers.

13 Correction of Information

13.1 Where a person disagrees with the accuracy of *personal information* or *confidential information* in the *custody* and *control* of Tarion, the person has the right to challenge the accuracy and have it addressed as follows:

- a) a person requesting a correction or amendment to their own *personal information* or *confidential information* in order to ensure its accuracy and/or completeness shall send a request in writing to Tarion's Privacy Officer. The request must include sufficient information to allow the Privacy Officer to authenticate the identity of the person making the request and to identify the applicable *personal information* or *confidential information* and the correction or amendment being sought; and
- b) Tarion shall respond in writing to a request for a correction or amendment to *personal information* or *confidential information* within a reasonable amount of time.

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

- a) a correction or amendment to *personal information* or *confidential information* received from the person to whom it relates shall be recorded by Tarion as soon as practically possible; and

- b) Tarion shall 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.
- 13.3 If a person's request for a correction or amendment is refused, Tarion shall provide the reason for such refusal in writing to the person to whom the information relates, and Tarion shall file with the *record* a brief statement of disagreement provided by the person if requested, unless to do so is impractical or would reasonably interfere with the regulatory activities of Tarion.
- 13.4 Tarion may be unable to make a requested correction or amendment 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 or amendment;
 - c) correction or amendment may reasonably interfere with a regulatory process of Tarion including, but not limited to, an inquiry, inspection, investigation or hearing;
 - d) correction or amendment may reasonably interfere with the regulatory or *enforcement* activities of another 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.

14 Fees

- 14.1 *Personal information* shall be made available to the individual to whom the information relates at a reasonable cost.
- 14.2 *Records*, other than *bulk data* and *personal information*, shall be made available to a requester for a fee that reflects the total cost of providing the information. The fee for providing *bulk data* will be determined on a case-by-case basis. In determining fees, Tarion shall make efforts to be consistent and base costs on publicly available criteria.
- 14.3 Before proceeding with an *access* request, Tarion shall provide the requester with the approximate fee for responding to the request, and then confirm whether the requester still wishes to proceed with the request.

15 Complaints and Data Breaches

- 15.1 A complaint about Tarion's handling of information in Tarion's *custody* and *control*, access to information, or correction to records shall be made in writing to Tarion's Privacy Officer and shall describe the issue the person wishes to have reviewed. The Privacy Officer shall review all complaints and make efforts to respond within 30 days of receipt of the complaint. If the Privacy Officer is unable to respond within 30 days, the Privacy Officer shall advise the person who made the complaint of the date a response can be expected. If a complaint is found to be justified, Tarion shall take appropriate measures to resolve the problem including, where necessary, amending its procedures and practices.
- 15.2 A data breach or suspected data breach involving information in Tarion's *custody* and *control* shall be reported in writing to Tarion's Privacy Officer and shall describe the concern or incident the person wishes to have reviewed. The Privacy Officer shall make efforts to respond within 30 days of receipt of the report. If the Privacy Officer is unable to respond within 30 days, the Privacy Officer shall advise the person who made the report of the date a response can be expected. The Privacy Officer shall investigate the reported data breach or suspected data breach in accordance with Tarion's Data Breach Response Policy. If a data breach has occurred, Tarion shall take appropriate measures to resolve the problem including, where necessary, amending its procedures and practices.

16 Administration

- 16.1 Tarion shall implement practices and procedures required to give effect to this Code, as soon as practicable, including those relating to,
- a) advising Board members, management, employees and contract workers about the Code, and providing appropriate training to ensure compliance with the Code's provisions; and
 - b) the development of documentation describing this Code and its related practices and procedures.

17 Interpretation

- 17.1 In the event that this Code conflicts with the *ONHWP Act* or any other applicable legislation, the *ONHWP Act* or applicable legislation shall prevail.

18 Effective Date and Review

- 18.1 This Code as amended comes into effect on March 1, 2021.
- 18.2 Tarion shall review this Code from time to time, and at least annually, and shall make any necessary changes to improve the effectiveness of the requirements and procedures in this Code. Any changes to this Code shall be posted to Tarion's website.