



Health Professions Review Board

Practice Directive 4

Applications by colleges to withhold information from applicants in registration decision reviews under [s. 42 of the *Administrative Tribunals Act \(ATA\)*](#)

Purpose

The review board may order that information in the Record¹ be received in confidence, to the exclusion of the applicant, if it is “of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.”² This practice directive provides direction to colleges on addressing this term, which is not defined under the ATA or the Health Professions Act; and provides details of the application process.

Procedure

1. The procedure for making a s.42 application is set out in rule 19 of the [Review Board’s Rules of Practice and Procedure](#).
2. Colleges do not need to make a s.42 application to sever or not include information in the Record if it is permitted under the Rules³
3. If the review board decides to deny all or part of a s.42 application under Rule 19(4), it will notify the college of its intention to disclose the information, and will also specify that disclosure will be carried out 14 days after the date of the notification. This is to allow the college time to notify the review board if it intends to judicially review the decision.
4. If the review board grants a s.42 application, it will ask the college to produce a redacted copy of the record for the applicant within 14 days of the review board’s direction.

Content of the Application

1. Fairness ordinarily requires the parties to have access to the same information unless there is a strong basis for uneven disclosure.⁴ In assessing a college’s application under s. 42 of the ATA, the review board must determine whether “the proper administration of justice” requires an exception to this principle. To assist the review board in making this determination, colleges may wish to address:

1 Defined in Rule 13 of the [Review Board Rules of Practice and Procedure](#)

2 s.42 of the *Administrative Tribunals Act*, Rule 19 of the [Review Board Rules of Practice and Procedures](#)

3 Rules 13, 15, and [Practice Directive 2 Preparing and Formatting the Record](#)

4 [Allen v. College of Dental Surgeons of British Columbia, 2007 BCCA 75](#)

- a. the importance of the individual's interests at stake on the review and the impact of nondisclosure on their ability to advance their case;
 - b. the importance of the opposing privacy or other interest sought to be protected and the impact of disclosure on that interest; and
 - c. whether there are any reasonably available solutions that would address privacy or other interests while enabling disclosure.
2. Colleges may wish to address the factors that govern the Ontario Health Professions Appeal and Review Board in making decisions on requests to receive information in confidence.⁵ That Board may refuse to give a party any evidence that may, in its opinion:
- a. disclose matters involving public security;
 - b. undermine the integrity of the complaint investigation and review process;
 - c. disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;
 - d. prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or
 - e. jeopardize the safety of any person.
3. The weight the review board gives to any of these factors will depend on the context of the review.



David Hobbs, Chair
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⁵ [Regulated Health Professions Act, 1991, S.O. 1991, CHAPTER 18, Schedule 2, s. 32\(3\)](#)