

S.I. 2003 No. 95

Telecommunications Act, 2001
(Act 2001-36)

TELECOMMUNICATIONS (CONFIDENTIALITY)
REGULATIONS, 2003

The Minister in exercise of the powers conferred on him by section 110(1)(n) of the *Telecommunications Act*, makes the following Regulations:

1. These Regulations may be cited as the *Telecommunications (Confidentiality) Regulations, 2003*. Citation.

2. In these Regulations,

Interpreta-
tion.

"claim of confidentiality" means any assertion made to the regulator that submitted material contains or reveals confidential information;

"confidential information" includes, with respect to any person, firm, partnership, corporation, association or other entity, information which is, contains or reveals

- (a) a trade secret;
- (b) financial, commercial, scientific, or technical information;
- (c) a process, a product design, a service configuration, an operation, a style of work, an apparatus, or other business proprietary information; or
- (d) the amount or source of any income, profits, losses, or expenditures;

and which, if disclosed, could reasonably be expected to

- (A) result in material financial loss or gain to any person;
- (B) prejudice the competitive position of any person; or
- (C) affect contractual or other negotiations of any person;

"party seeking disclosure" has the meaning assigned to it by regulation 4(3);

"regulator" means the Commission or the Minister, as the context requires;

"request for disclosure" has the meaning assigned to it by regulation 4;

"restricted material" means any submitted material for which there exists a claim of confidentiality and which is not subject to section 7(2) of the Act;

"submitted material" means any document or material submitted to the regulator in relation to any proceeding or otherwise required to be submitted to the regulator.

Designation
of confi-
dential
informa-
tion.

3. (1) Any person may submit a claim of confidentiality with regard to submitted material where that person considers the submitted material to contain or reveal confidential information.

(2) A party making a claim of confidentiality shall do so in writing and shall submit the claim to the regulator.

(3) A claim of confidentiality made under paragraph (1) shall set forth the reasons why the submitted material contains or reveals information that is said to be confidential information.

Treatment
of restricted
materials.

4. (1) The regulator shall not

- (a) allow access to restricted material,
- (b) provide copies of restricted material, or
- (c) reveal the contents of restricted material

to any person except as specifically authorised in these Regulations.

(2) A claim of confidentiality may be placed on the public record and a copy of the claim may be provided to any party upon request.

(3) Any party that seeks access to a copy of, or public disclosure of restricted material, in these Regulations referred to as the "party seeking disclosure", must submit to the regulator a request for disclosure as follows:

- (a) a written request for that access, copy or disclosure setting forth in detail the reasons for the request, including the public interest relevant to the regulator's responsibilities that will be served by providing the access, copy or disclosure; and
- (b) any material in support of the reasons for public disclosure that shows how the disclosure would be in the public interest.

(4) A copy of a request for disclosure shall be served by the party seeking disclosure on the party making the claim of confidentiality.

(5) The party making the claim of confidentiality shall have the right to submit to the regulator within 10 business days after the date of service of the request for disclosure, an objection to the request for disclosure and shall serve a copy thereof on the party submitting the request for disclosure; and the regulator shall not disclose, give access to or distribute the restricted material during this period.

(6) The regulator shall have regard to the objections of a party making a claim of confidentiality.

(7) Where the regulator of his or its own motion intends to provide access to, release copies of or place on the public record any restricted material, the regulator shall give the party making the claim of confidentiality prior written notice of this intention and shall give the party making the claim of confidentiality 10 business days to submit to the regulator an objection

to such a release or disclosure; and the regulator shall not disclose, give access to or distribute the restricted material during this period.

(8) Where the regulator is satisfied that, based on all the material before the regulator,

- (a) no harm would be likely to result from providing access, copies or disclosure of the restricted material; or
- (b) any harm shown is not sufficient to outweigh the public interest in disclosing or providing access or copies to the contents of the restricted material,

the regulator shall notify the party making a claim of confidentiality of its decision in writing giving reasons why the objections were not sustained; but shall not disclose, distribute or give access to the restricted material for a period of 14 days, in order to allow the party making a claim of confidentiality to appeal the decision of the regulator to a Judge in Chambers.

(9) Where a party appeals a decision of the regulator under paragraph (8), the appellant shall give notice of the appeal to the regulator; and the decision of the regulator to disclose the restricted material shall be stayed or suspended pending the decision of a Judge.

(10) Where the regulator is of the opinion that, based upon all the material before it, the harm likely to result from providing access or disclosure justifies the claim of confidentiality, the regulator shall

- (a) order that
 - (i) no access to copies of or disclosure of the restricted material be provided to any person; or
 - (ii) the restricted material be not placed on the public record;

- (b) provide access to, copies of, or disclosure of an abridged version of the restricted material in respect of which a claim of confidentiality exists where the abridged version was provided by and approved in writing by the party making the claim of confidentiality; or
- (c) order that the restricted material or information contained in the material or revealed by the material be disclosed to parties to a proceeding before the regulator at a hearing held *in camera* and subject to a written confidentiality agreement between the party making the claim of confidentiality and the person to whom the restricted material is disclosed.

(11) Any claim of confidentiality or any request for disclosure of restricted material and any reply made to the claim or request shall be reviewed by the regulator *in camera* and the person making the claim of confidentiality or the request for disclosure shall be entitled to be heard on the matter *in camera*.

5. (1) Any

- (a) officer, employee or contractor of the regulator,
- (b) governmental authority, or
- (c) other person

Penalties
for
violation.

who receives restricted material and publishes, divulges, discloses or distributes the restricted material or any confidential information contained in the restricted material in any manner or to any extent not authorised by these Regulations, the Act or any other law, is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 2 years.

(2) Any person who contravenes any of the provisions of these Regulations is liable in damages for any loss caused to any other person for the contravention.

(3) An action under subsection (2) may be commenced at any time within 3 years from the time when the cause of action arose.

Exceptions.

6. Nothing in these Regulations shall prevent the regulator from sharing any material or information, including any restricted material or information contained therein or revealed thereby with any competent law enforcement agency or other competent authority for the limited purposes of law enforcement, protection against terrorism, or promotion of national security.

Made by the Minister this 18th day of July, 2003.

ANTHONY P. WOOD
Minister responsible for Telecommunications.