



ARCS: 292-30
File: HOU-2017-70928

May 11, 2017

Sent via email:

Re: Request for Access to Records
Freedom of Information and Protection of Privacy Act (FOIPPA)

I am writing further to your request received by the Ministry of Natural Gas Development and Minister Responsible for Housing. Your request is for:

A list of all Residential Tenancy Branch arbitrators and the number of decisions that each rendered in 2016 that went in favour of the landlord and the number that went in favour of the tenant.

Please find enclosed a copy of the records located in response to your request. Some information has been withheld pursuant to section(s) 19 (Disclosure harmful to individual or public safety), of FOIPPA. A complete copy of FOIPPA is available online at:

http://www.bclaws.ca/civix/document/id/complete/statreg/96165_00

Please take note of the following information regarding the data requested.

Hearing outcomes are recorded in the Residential Tenancy Branch Case Management System (CMS) based on a limited selection of descriptions in a drop-down box. These are:

1. Landlord
2. Tenant
3. Split Decision
4. Dismissed
5. Dismissed With Leave to Reapply
6. Cancelled/Withdrawn
7. Jurisdiction Refused
8. Settled

.../2

The response to request HOU-2017-70928 provides data on outcomes 1, 2 and 3 enumerated above. Approximately 51 per cent of decisions rendered by RTB arbitrators in 2016 record these outcomes. The remaining 49 per cent record other outcomes.

The CMS coding selected by the arbitrator is subjective and may not represent the details contained in their written decision. Often, the outcome can be described in more than one way. Consequently, reviewing the raw data from CMS on hearing outcomes, in the absence of the accompanying decisions, may lead to inaccurate or misleading interpretation.

The following examples underscore this point:

Example 1: An arbitrator dismisses a tenant's application to cancel a notice to end tenancy without leave to reapply and issues the landlord an order of possession. An arbitrator may record the decision in the CMS as:

- Dismissed without leave to reapply, or;
- In favour of the landlord.

Example 2: An arbitrator grants a tenant a monetary award for the return of double the security deposit, but dismisses a tenant's claim for punitive damages, which the *Residential Tenancy Act* does not allow. An arbitrator may record the decision in the CMS as:

- Split Decision, or
- In favour of the tenant.

Other factors that need to be taken into consideration when interpreting the provided data include:

- If a party to a dispute fails to appear for the dispute resolution hearing and does not provide evidence of their position in the matter, the hearing may proceed in their absence and result in an outcome in favour of the party in attendance. Whether one or both parties attend is not recorded in the CMS.
- If an arbitrator is assigned multiple applications for dispute resolution related to the same dispute, they may be joined together and heard at the same time. The arbitrator, however, must render a decision for each application. If an arbitrator hears a joined dispute with 10 tenant applications and finds in favour of the tenants, the arbitrator will record an outcome in favour of the tenant for each application in the CMS. Joined applications are relatively infrequent and vary in size. This may exaggerate the number of decisions an arbitrator recorded in favour of a landlord or tenant.
- Newly hired arbitrators are often assigned less complex files than more experienced arbitrators. Less complex files include landlord applications for an order of possession

where the tenant has not paid rent. Because landlords have a high rate of success in these hearings, an arbitrator assigned a greater number of these files will record more decisions in favour of the landlord.

- Files are typically assigned randomly to experienced arbitrators. As sample size decreases however, numbers and types of files assigned to arbitrators will vary. Over the course of a year therefore, some arbitrators will randomly be assigned more or less of a specific type of file. Some variation in the number of decisions recorded by arbitrators in favour of a landlord or tenant is due to random distribution.

These records will be published on the BC Government's Open Information website a minimum of five business days after release. To find out more about Open Information, please access the Open Information website at: www.gov.bc.ca/openinformation

If you have any questions regarding your request, please contact Charlotte van Schalkwyk, the analyst assigned to your request, at 250 356-5055. This number can be reached toll-free by calling from Vancouver, 604 660-2421, or from elsewhere in BC, 1 800 663-7867 and asking to be transferred to 250 356-5055.

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

A handwritten signature in black ink, consisting of several vertical strokes followed by a horizontal line.

On behalf of
Ken Bejcek, Manager
Resource Team, Information Access Operations
Enclosures

<p>How to Request a Review with the Office of the Information and Privacy Commissioner</p>
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If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250 387-5629 Fax 250 387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.