

OSPG Guidance: Information to be Publicly Available

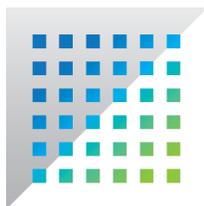
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Version Control History

Version #	Date (YYY-MM-DD)	Modification	Approved by
1.0	2021-02-05	Initial version	Paul Craven, Superintendent
1.1	2021-12-06	Update direction regarding delays in publication	Rebecca Freedman, Director



OSPG Guidance: Information to be Publicly Available

Purpose:

The purpose of this guidance is to outline expectations to assist regulatory bodies in developing bylaws and policy respecting the inclusion of discipline information on their public websites. This includes:

- When the results of the investigation and discipline hearing should be published;
- Registrant information that should be displayed;
- How information is displayed/accessed by the public.

Context:

Section 82 of the *Professional Governance Act* (PGA) specifies that each regulatory body must create bylaws about information that is to be made publicly available. This information includes:

- Discipline hearings
- Consent orders
- Any other matter prescribed by regulation

Information that is to be made public must include the following:

- If a registrant's conduct is at issue, the name of the registrant;
- The fact that a citation is issued;
- Any other information prescribed by regulation of the Lieutenant Governor in Council.

The Lieutenant Governor in Council may make regulations in respect of any exceptions pertaining to the application of this section, as well as any other matter relating to information that is to be made publicly available under section 82 of the PGA.

Section 75 (8) (c) of the PGA requires the regulatory body to publish information about the disposition of the discipline hearing on its website in the form and manner required by the Superintendent or in accordance with LGIC regulations.

Section 31 of the PGA notes that certain information regarding discipline must be detailed on a publicly available register. This includes:

- Limits or conditions imposed on the regulated practice of individuals under the PGA;
- Limits or conditions imposed on the regulated practice of firms under the PGA;
- A notation of each cancellation or suspension of the person's registration, including any cancellation or suspension that
 - occurred or was recorded before the coming into force of this section, or



- was imposed by the regulatory body under an enactment that applied to the regulatory body before this section applied to the regulatory body.
- Please refer to OSPG Guidance: The Register for further details on register notations associated with cancellations or suspensions of registrations.

Policy Intent:

The intent of this guidance is to ensure that:

- Regulatory bodies support the transparency of their investigation and discipline outcomes by publishing publicly accessible findings on their website;
- User experience is enhanced through uniform presentation of information pertaining to disciplinary outcomes;
- The public, proponents and interested parties have timely and relevant information that facilitates an evaluation of a registrant's suitability to practice; and
- The nature of the conduct of issue and disciplinary outcomes can provide lessons learned and act as a deterrent for registrants to avoid similar outcomes.

Standards of Good Regulation

The OSPG Standards of Good Regulation set out standards and criteria that will be considered when assessing regulatory body performance over time. Standards 11 and 17 below reflect OSPG expectations regarding transparency of disciplinary outcomes.

11. The regulatory body maintains and makes publicly available an accurate and complete register of professionals.

17. The regulatory body's investigation and discipline process is transparent, objective, impartial, fair, and allows for thorough, evidence-based and proportionate responses to complaints.

Please refer to the Standards of Good Regulation document for further information about these standards.

Related Reference Documents:

OSPG Guidance: The Register

OSPG Guidance: Regulatory Body Complaints and Discipline

Background:

This guidance has been informed by key policy considerations raised in discussions with regulatory bodies as well as an analysis of the existing websites of the five regulatory bodies and the websites of other professional regulators. While this guidance aims to supplement and enhance requirements stemming from the PGA, regulatory bodies who have developed useful practices that go beyond these requirements should feel free to continue these practices. For instance, regulatory bodies may find it useful to share some information from disciplinary outcomes through emails and newsletters to registrants in order to capitalize upon the learning opportunity presented by the incident.



Policy Direction:

The OSPG expects regulatory bodies will establish bylaws relating to the publishing of information about citations and disciplinary outcomes based on the following policy considerations and best practices:

General publication requirements

1. Regulatory bodies must begin to publish information about citations and disciplinary outcomes starting when the PGA comes into effect. This information must include the minimal level of information specified in the PGA on a prominent area of their website. Historical disciplinary outcomes do not need to be updated with the information required by the PGA, but regulatory bodies may want to explore options for making this information available to the public.
2. Visitors to the regulatory body's website should be able to easily locate information on the complaints and discipline process as well as outcomes of investigations and discipline hearings where an adverse finding been made.
3. While a searchable database may be useful in the case of regulatory bodies with a large number of registrants and/or disciplinary outcomes, regulatory bodies with fewer registrants and/or disciplinary outcomes may find this feature is not necessary.
4. Notations for cancellations or suspensions that appear in the register must align with the disciplinary outcomes located elsewhere on the public website.
5. Regulatory bodies should be internally consistent with the use of uniform fields and terminology.
6. A specific regulatory body contact on the complaints and discipline page should be identified for site visitors looking for more information.
7. Despite section 82(2) of the Act, the registrar must not make information publicly available under that section if the registrar considers that the public interest in the information being made publicly available is outweighed by the privacy interests of
 - a. a complainant or other person, other than a registrant, or
 - b. a registrant who may be suffering from a physical or mental ailment, an emotional disturbance, or an addiction to alcohol or drugs
8. The general right of access to information related to disciplinary cases may be restricted when necessary by limited and specific exceptions. For instance, in order to uphold procedural fairness to a respondent whose discipline hearing is in-progress, it may be appropriate to delay the publication of findings of a concurrent, linked discipline proceeding, if there is a risk that the findings of the concluded hearing might prejudice, jeopardize or otherwise negatively influence the in-progress hearing.

When considering a delay of publication, regulatory bodies should consider carefully the subset of information that could be published immediately without prejudice to the in-progress hearing (e.g. that fact that the discipline panel has reached its findings), and the subset of information that could prejudice the in-progress hearing (e.g. the details of the discipline order). Any withheld information should be published immediately upon conclusion of the linked proceeding.

To promote transparency, a notation should be made on any publicly-accessible file regarding the discipline proceeding of the respondent, indicating that certain information is being temporarily withheld to ensure the fair conclusion of another proceeding. Regulatory bodies should also



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consider whether appropriate measures have been imposed on the respondent's practice to mitigate risk to the public of information being temporarily withheld.

9. Regulatory bodies must notify the superintendent each time information is made publicly available according to this guidance.

Protocol for providing notice to the Superintendent: Notice should be sent to the Superintendent with a copy to the Director of Audit, Investigations and Performance Management. Please identify both the date of the decision and the date of publication. If a matter is an outlier where the normal timelines do not strictly apply, please explain that in your notice.



Publication requirements for specific actions taken under Part 6 of the PGA

Some mandatory publication requirements are set out in the PGA as noted earlier in this document. The following section details the OSPG's expectation of transparency in respect of significant remedial or disciplinary actions taken by regulatory bodies. Publication requirements and limits of discretion are set out in respect of each remedial or disciplinary matter.

Reprimand and Remedial Action by Consent (RRAC) or Alternative Complaint Resolution (ACR) (OSPG policy requirement)

1. Information to be published in respect of either a RRAC or ACR includes:
 - Name and qualification of registrant, (required if a limitation has been placed on the registrant's practice; otherwise council has discretion to not publish the registrant's name)
 - Date and nature of the conduct at issue
 - Details of the resolution reached by RRAC or ACR
2. Discretion of council
 - It is OSPG policy that, if no limitation has been placed on the registrant's practice, council may choose not to publish the registrant's name, if it determines that non-publication is in the public interest.
 - Regulatory bodies must keep records of all instances where discretion is used on the publication of a registrant's name in a disciplinary action.
3. Timing
 - OSPG expects this information to be published within 30 days of the RRAC or ACR being concluded.

Consent orders (statutory publication requirement under section 82)

1. Information to be published in respect of a Consent Order includes:
 - Name and qualification of the registrant
 - Date and nature of the conduct at issue
 - Copy of the consent order signed between regulatory body and the registrant
2. Discretion of Council
 - As this is a statutory publication requirement, discretion of council is limited to the circumstances set out in the Professional Governance General Regulation (see #7 and #8 in the general publication requirements above)
 - Regulatory bodies must keep records of all instances where discretion is used on the publication of a registrant's name in a disciplinary action.
3. Timing
 - OSPG expects this information to be published within 30 days of the order being finalized.

Extraordinary action taken under section 67 (OSPG policy requirement)

1. Information to be published in respect of a council taking extraordinary action to protect the public under section 67 includes:



- Name and qualification of the registrant
 - Date and nature of the conduct at issue
 - A copy of the order under section 67
2. Discretion of council
 - While publication is not a statutory requirement, it is OSPG policy that discretion of council is limited to the same circumstances set out in the Professional Governance General Regulation (see #7 and #8 in the general publication requirements above)
 - Regulatory bodies must keep records of all instances where discretion is used on the publication of a registrant's name in a disciplinary action.
 3. Timing
 - OSPG expects this information to be published within 30 days of the order being issued.

Citations (statutory publication requirement under section 82)

1. Information to be published in respect of a citation includes:
 - Name and qualification of the registrant
 - Date and nature of the conduct at issue
 - The fact that a citation was issued
2. Discretion of Council
 - As this is a statutory publication requirement, discretion of council is limited to the circumstances set out in the Professional Governance General Regulation (see #7 and #8 in the general publication requirements above)
 - Regulatory bodies must keep records of all instances where discretion is used on the publication of a registrant's name in a disciplinary action.
3. Timing
 - OSPG expects this information to be published at least 30 days in advance of the discipline hearing.

Adverse determinations at disciplinary hearings (statutory publication requirement under section 82)

1. Information to be published regarding an adverse determination should include:
 - Name and qualification of the registrant
 - Date and nature of the conduct at issue
 - Outcome and full text of the disciplinary order
 - Disciplinary order must include reasons for decision
2. Discretion of Council
 - As this is a statutory publication requirement, discretion of council is limited to the circumstances set out in the Professional Governance General Regulation (see #7 and #8 in the general publication requirements above)
 - Regulatory bodies must keep records of all instances where discretion is used on the publication of a registrant's name in a disciplinary action.
3. Timing



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- OSPG expects this information to be published within 30 days of decision being made.

Discipline cases where all elements of the citation are dismissed following a discipline hearing (OSPG policy requirement)

1. Information to be published regarding a case that was dismissed should include:
 - Date and nature of the conduct at issue
 - Outcome and reasons for decision
2. Discretion of council
 - A registrant's name does not need to be published if the case is dismissed.
 - Subsequent clarification may be published on the website stating that the registrant subject to the citation was not found guilty of the citation
3. Timing
 - OSPG expects this information to be published within 30 days of decision being made.