

# PROCEDURES

PRC-59

## Request for Takedown of Online Materials by Record Subjects or Copyright Owners

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### 1. Definitions

**Confidential information** – means the eleven categories of information set out in British Columbia's *Freedom of Information and Protection of Act* in sections 12–21 (e.g., business interests of a third party, legal advice, financial or economic interests of a public body).

**Copyright** – means (i) a property right in an original work of authorship (such as a literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work; and (ii) the body of law relating to such works.

**Digital archival materials** – means (i) official digital university records that have been transferred to the Archives; (ii) digital records of individuals, families, campus community organizations, and non-SFU corporate bodies that have been privately donated to the Archives; and (iii) digital documents and artifacts that have been otherwise collected by SFU Archives in order to support teaching and research.

**Low risk** – archival materials judged to have no potential commercial value to copyright owner(s).

**Orphan work** – means a work that is still protected by copyright, but whose author or other rights-holder is not known or cannot be located or contacted to obtain copyright permissions.

**Personal information** – means recorded information about an identifiable individual.

**Takedown** – means the removal of digital archival materials from online access.

### 2. Purpose

- 2.1 SFU Archives is committed to expanding public access to its holdings by making born-digital and digitized archival materials available, primarily through its online access system. In doing so, the Archives strives to protect the personal and confidential information of individuals and organizations that are the subjects of archival materials; and to deal respectfully with copyrights that exist in archival materials when the materials are not in the public domain and copyright does not belong to SFU.
- 2.2 This procedure enables record subjects and copyright owners to register objections relating to their privacy, confidentiality, or copyright and it describes the means by which the Archives handles these requests and resolves disputes.

### **3. Scope**

- 3.1 This procedure applies to digital archival materials that the Archives makes available to the public through online channels, including but not limited to the Archives' description database, its website, research guides, exhibitions, etc.

### **4. Guiding principles**

#### Personal and confidential information

- 4.1. SFU Archives is committed to respecting the personal privacy of record subjects as well as safeguarding confidential information that may be captured in public records. The Archives makes materials available online only if:
- 4.1.1 A review performed by an archivist confirms there is no sensitive personal or confidential information contained in the materials that are subject to provincial freedom of information and protection of privacy legislation. See *Policy-002: Access to Archival Materials* for more details.
  - 4.1.2 The donor of privately donated materials has placed no access restrictions on the donated material.
  - 4.1.3 There are no known reasonable ethical concerns in making the materials publicly available.

#### Copyright

- 4.2 Due to the voluminous and complex composition of record aggregations transferred or donated to the Archives, it is challenging to accurately calculate copyright duration, identify copyright owner(s) or, if identified, locate them to obtain permission to make the materials accessible online.
- 4.3 Given these challenges, SFU Archives employs a risk management approach to copyright, making materials available only if one of the following conditions are met:
- 4.3.1 The materials are in the public domain.
  - 4.3.2 SFU owns copyright as the first owner.
  - 4.3.3 The copyright owner has assigned copyright to the Archives.
  - 4.3.4 The copyright owner has retained copyright, but made the materials available under a Creative Commons license.
  - 4.3.5 The copyright owner has retained copyright, but has given permission to the Archives to disseminate their protected materials.
  - 4.3.6 The materials are protected, but the Archives considers that online dissemination represents a low risk of exposing the University to copyright infringement claims, damage to reputation, or damage to its relationships with donors and local communities.

## **5. Why the Archives would takedown digital archival materials**

- 5.1 The Archives recognizes that from time to time materials made available online may expose records subjects' privacy to harm; or that copyright owners may object to online dissemination of protected materials that the Archives deemed orphan works or unlikely to be of any economic value (i.e., low risk).
- 5.2 The Archives will take down digital archival materials it has made available online when:
  - 5.2.1 The materials were posted in error and its removal is required to rectify the mistake. For example, the materials contain sensitive personal information about an identifiable individual that was inadvertently missed in a review; or the materials have multiple rights owners and permission to make the materials available online was granted by some, but not all the owners.
  - 5.2.2 The copyright owner of a work previously judged by the Archives to be an "orphan work" or "low-risk" material comes forward and objects to the work being made accessible online.
  - 5.2.3 As a result of changed circumstances, materials previously made accessible online are now considered to be subject to an exception to the public's right of access under BC's *Freedom of Information and Protection of Privacy Act*.

## **6. Who can make a request?**

- 6.1 A request to assess materials for takedown may be initiated by:
  - 6.1.1 An individual or organization that is a copyright owner of materials disseminated online.
  - 6.1.2 An individual who is a record subject and whose personal information is identifiable in materials disseminated online.
  - 6.1.3 An organization that is a record subject and whose confidential information is identifiable in materials disseminated online.
  - 6.1.4 A university department or employee who believes information in materials disseminated online has been disclosed in violation of BC's *Freedom of Information and Protection of Privacy Act*.
- 6.2 The Archives will not accept requests from third parties unless evidence is supplied that they are authorized to act for an individual or organization described above.

## **7. How to make a request**

- 7.1 Complete the *Request for Takedown of Online Materials* form.

- 7.2 Send the form to the Archives by post or email at:

Reference Archivist  
Archives and Records Management Department  
Maggie Benston Student Services Centre  
Simon Fraser University  
8888 University Drive

Burnaby, BC Canada V5A 1S6

Email: [archives@sfu.ca](mailto:archives@sfu.ca)

- 7.3 The Archives will only accept requests made using its designated form (FRM-57).

## **8. Assessing a request**

- 8.1 The Archives will acknowledge a takedown request by email or post within two business days of receipt.
- 8.2 The Archives will register a request upon receiving a completed *Request for Takedown of Online Materials* form. Failure to complete the form in full or supply detailed and accurate information may delay a resolution. If more information is needed, the Archives will request that the requestor supply the required information.
- 8.3 Upon registering a request, the Archives will take down the disputed materials.
- 8.4 The Archives will investigate the claim, and may contact a requestor ask for additional information or attempt to work out a resolution acceptable to both parties.
- 8.5 The Archives will communicate its final decision to a requestor in writing, including the Archives' response to specific claims, the Archives' reasons for accepting or rejecting them, and the final outcome with respect to the disputed materials.
- 8.6 As an outcome of the requestor investigation, the disputed materials will be:
- 8.6.1 removed from online access until either copyright has expired or the passage of time has reduced the sensitivity of the personal or confidential information
  - 8.6.2 restored to online access under different terms and conditions; or
  - 8.6.3 restored to online access under the original terms and conditions.
- 8.7 The Archives will update descriptive catalogue records in SFU Atom, if necessary, to reflect an amended access status.

## **9. Authority**

- 9.1 These procedures are administered under the authority of the Archives and Records Management Department. Questions about interpretation should be directed to the University Archivist. See SFU Archives' website (<http://www.sfu.ca/archives>) for contact details.