



CANADIAN NUCLEAR SAFETY COMMISSION

GUIDANCE DOCUMENT ON CONFIDENTIAL FILINGS

1. INTRODUCTION AND PURPOSE

The purpose of this Guidance Document on Confidential Filings is to establish uniform procedures for the filing of confidential materials in relation to all licensing applications and related proceedings that come before the Canadian Nuclear Safety Commission or a Designated Officer. This Guidance Document is also intended to assist participants in the Commission's proceedings in understanding how the Commission will deal with such filings.

The Commission's general policy is that all licensing and proceedings records should be open for inspection by, or available to, any person. This reflects the Commission's view that its proceedings should be open, transparent and accessible. The Commission therefore generally places materials it receives in the course of the exercise of its licensing authority under the *Nuclear Safety and Control Act* and other legislation (such as the *Canadian Environmental Assessment Act 2012*) on the public record so that all interested parties can have equal access to those materials. That being said, the Commission relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Guidance Document seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Guidance Document is that the placing of licensing applications and related materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Commission that confidential treatment is warranted in any given case.

The Commission will continue to monitor the effectiveness of its approach to confidential filings and will revise this Guidance Document on an as-needed basis.

The Commission's *Rules of Procedure* govern the conduct of all proceedings before the Commission.

2. APPLICATION

The procedures set out in this Guidance Document are to be followed by all participants in a proceeding before the Commission, unless otherwise directed by the Commission, for documents provided after January 31, 2015. This includes proceedings to be determined under delegated authority and proceedings commenced on the Commission's own motion.

This Guidance Document is subordinate to existing law and regulations, including the *Access to Information Act*, the *Privacy Act* and the *Nuclear Safety and Control Act*, Commission instruments (i.e., regulations, licences, regulatory documents and Commission orders) and the Commission's *Rules of Procedure*.

This Guidance Document does not address the manner in which Commission members and Commission staff will handle confidential information, which is an issue of the Commission's internal processes. The Commission has implemented internal procedures that are designed to ensure that confidential information is segregated from other information and is made available within the Commission on a limited basis.

3. DEFINITIONS AND INTERPRETATION

3.1. Definitions

3.1.1. In this Guidance Document:

"Act" means the *Nuclear Safety and Control Act*;

"applicant" means a person who makes an application to the Commission, including a licensee;

"application" when used in connection with a proceeding commenced by an application to the Commission, means the commencement by an applicant of a proceeding before the Commission;

"ATI" means the *Access to Information Act*;

"business day" means any day which is not a holiday;

"Commission" means the Canadian Nuclear Safety Commission established by section 8 of the *Nuclear Safety and Control Act*, and includes any panels or delegates thereof;

"Commission Secretary" means the Secretary of the Commission and any Assistant Secretary appointed by the Commission under the Act;

"document" or **"record"** means any documentary material, regardless of medium or form;

"hearing" means a hearing in any proceeding before the Commission, and includes an electronic hearing, an oral hearing, and a written hearing;

"holiday" means any Saturday, Sunday, statutory holiday, and any day that the Commission's offices are closed for observance of a holiday within the meaning of the *Interpretation Act*;

"party" refers to the applicant or licensee;

“**proceeding**” means a process to decide a matter brought before the Commission, including a matter commenced by application or on the Commission’s own motion;

“**requestor**” includes any person requesting access to information;

“**senior officer**” means the chairperson of the board of directors, the president, a vice-president, the general counsel or the secretary of the applicant.

3.1.2. Except as otherwise defined in section 3.1.1, words and expressions used in this Guidance Document shall have the meaning ascribed to them in the Act and the Commission’s *Rules of Procedure*.

3.2. Interpretation

3.2.2. In this Guidance Document:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words importing a person include (i) an individual, (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or academic;
- (d) where a word or phrase is defined in this Guidance Document, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning;
- (e) a reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision; and
- (f) the expression “including” means including without limitation.

4. REQUEST FOR CONFIDENTIALITY

4.1 In the absence of a request for confidentiality, all information that is not indicated as being confidential is considered publicly available and, where appropriate, will be included on the public record. An applicant that wishes information that would normally be included on the public record to be held confidential must follow the procedure set out in Part 5, and the Commission will determine the request in accordance with Part 5.

4.2. Where the Commission indicates that information will be treated in confidence, a requestor may request access to that information by filing a request with the Commission Secretary and serving a copy of the request on the licence applicant. Where applicable, the request must address the matters identified in paragraph (b) of section 5.7. The applicant and/or other affected third parties will have an opportunity to object to the request for access to confidential information. The applicant (and/or

affected third parties) must file its objection with the Commission Secretary and serve it on the requestor within the time specified by the Commission. The Commission will determine the request for access to confidential information in accordance with Part 5.

4.3. In some instances, NSCA related regulations identify predefined categories of information that will be considered confidential in the normal course (for example, section 21 of the *General Nuclear Safety and Control Regulations* regarding prescribed information). In these instances, such information will be treated in confidence and no formal request for confidentiality is required. However, to the extent practicable, any such information should be clearly marked “confidential” and specific reference to the applicable regulatory provision(s) should be identified.

5. PROCESS FOR CONFIDENTIALITY REQUESTS IN MATTERS BEFORE THE COMMISSION

The processes set out in this Part are intended to allow for the protection of information that has been properly designated as confidential. The onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Commission that confidential treatment is warranted in any given case. It is also the expectation of the Commission that applicants will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure, and to prepare meaningful redacted documents so as to maximize the information that is available on the public record. This will provide requestors with a fair opportunity to present their cases and permit the Commission to provide meaningful and well-documented reasons for its decisions.

5.1. All filings must take into consideration the Commission’s *Rules of Procedure*, specifically Rule 12 of the *Rules of Procedure*, which deals with confidential documents before the Commission.

5.2. Rule 12 of the Commission’s *Rules of Procedure* specifies in what circumstances the Commission will protect information. In this regard, an applicant shall request that all or part of a document be held confidential and provide justification.

5.3. A request for confidentiality must be addressed to the Commission Secretary, c.c. to the CNSC Senior ATIP Advisor.

5.4. A request for confidentiality must include the following items:

(a) an Accompanying Statement (see Appendix A) signed by a senior officer of the applicant indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental;

(b) a confidential, un-redacted version of the document containing all of the information for which confidentiality is requested. This version of the document should be marked “confidential” and should

identify all portions of document for which confidentiality is claimed by using shading, square brackets or other appropriate markings, and by explaining why the information should be severed; and

(c) either:

i. a non-confidential, redacted version of the document from which the information that is the subject of the confidentiality request has been deleted or stricken; or

ii. where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document.

5.5. A copy of the Accompanying Statement requesting confidentiality, together with the non-confidential version or non-confidential description of the document (as applicable), will be placed on the public record. The confidential, un-redacted version of the document will, subject to section 5.6, be kept confidential until the Commission has made a determination on the confidentiality request.

5.6. A requestor may object to the request for confidentiality, within 5 business days of knowing about the request, by filing an objection with the Commission Secretary. The objection must be served within 3 business days on the party that made the confidentiality request. Failure to serve the party within the 3 business days period may result in a rejection of the objection by the Commission. The party that made the confidentiality request may object to the request for access within the time and in the manner specified by the Commission.

5.7. An objection to a request for confidentiality must address the following:

(a) the reason why the requestor believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part, by reference to the grounds for confidentiality expressed by the party making the request for confidentiality; and

(b) the reason why the requestor requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case.

5.8. The party requesting confidentiality will have an opportunity to reply to the objection. The replying party must file its reply with the Commission Secretary and serve it on those interested participants identified by the Commission within the time specified by the Commission.

5.9. The Commission will then assess whether the request for confidentiality should be granted, and may determine that a request for confidentiality is not warranted regardless of whether any party has objected to the request. Some of the factors that the Commission may consider in making this assessment are listed in **Appendix B**, including whether the Commission has in the past assessed or maintained the same type of information as confidential. Although the Commission recognizes that consistency in the treatment of information is desirable, the issue of confidentiality of any type of information will be addressed on a case-by-case basis in light of all of the circumstances of the case.

5.10. In determining the request for confidentiality, the Commission may:

- (a) request that the document placed on the public record, in whole or in part;
- (b) request that the document be kept confidential, in whole or in part;
- (c) request that the non-confidential redacted version of the document or the non-confidential description or summary of the document (as applicable) be revised;
- (d) request that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or
- (e) make any other request that the Commission finds to be in the public interest, taking into account the potential harm that disclosure might occasion.

5.11. The Commission will notify the party and requestors, if any, of its decision in relation to a request for confidentiality.

5.12. Where the Commission has requested that information that is the subject of a confidentiality request be placed on the public record or disclosed to another party, in whole or in part, the person who filed the information will, subject to section 5.13, have a period of 5 business days in which it may request that the information be withdrawn. Such request shall be made in writing to the Commission Secretary or, where the request is made during an oral hearing, directly to the Commission.

5.13. The ability to request the withdrawal of information under section 5.12 does not apply to information that was required to be produced by a request of the Commission.

5.14. A party may also seek review of the decision of the Commission in instances where there is a disagreement between the applicant (or licensee) and the Commission (including its staff). The decision-maker in the event of a review shall not be a person who was the initial decision-maker.

5.15 If the party that made the request for confidentiality indicates, within five business days of the date of receipt of the Commission's decision, that it intends to seek review of the decision, the Commission will not place the document on the public record until the review has been concluded or the time for filing a review has expired without a review having been commenced. In the absence of such an indication of intent to seek a review, the Commission will deal with the information in the manner set out in its decision.

6. ACCESS TO INFORMATION ACT and PRIVACY ACT

Participants in the Commission's processes are reminded that the Commission is subject to ATI. ATI addresses circumstances in which the Commission may, upon request, be required to release information that is in its custody or under its control, and generally prohibits the Commission from

releasing personal information. Accordingly, the Commission will have regard to its obligations under ATI when making determinations in relation to confidential filings.

7. ACCESS TO CONFIDENTIAL INFORMATION OUTSIDE OF PROCEEDING

Interested persons may wish to see confidential information at times other than during the proceeding in which the confidential information was filed. In such a case, the interested person may request access to that information by filing a request with the CNSC Senior ATIP Advisor. The person that filed the confidential information will have an opportunity to object to the request for access to that information. The objection must be filed with the CNSC Senior ATIP Officer.

Appendix A
Accompanying Statement

CANADIAN NUCLEAR SAFETY COMMISSION
REQUEST TO PROTECT CONFIDENTIAL INFORMATION

ACCOMPANYING SUBMISSION

CANADA

PROVINCE OF _____

IN THE MATTER OF _____

I, (name in full) (address), an authorized senior officer of (name of applicant / licensee)

DO SUBMIT THAT, WITH RESPECT OF THE APPLICATION BY (APPLICANT/LICENSEE) REGARDING AN APPLICATION FOR (ISSUANCE/AMENDMENT/RENEWAL/REPLACEMENT) OF A LICENCE FOR (NAME OF FACILITY), AND TO THE BEST OF MY KNOWLEDGE AND BELIEF:

1. (Name of applicant/licensee) wishes to have protected / restricted / prohibited from public disclosure the following document (attached):

- (Identification of document(s))

2. I understand that the Commission may deem all documents in support of the licence or certification application as releasable to the public, unless the document is accompanied by an accompanying submission signed by a senior officer seeking to protect / restrict / prohibit the document from public disclosure.

3. The information contained in the above-referred document(s) should be protected / restricted / prohibited pursuant to paragraph (refer to appropriate provisions of Rule 12 of CNSC Rules of Procedure) for the following reasons:

(Insert explanation or annex as attachment)

4. The information sought to be protected / restricted / prohibited is being provided to the CNSC in confidence, and is to be received in confidence by the CNSC.

5. The information sought to be protected / restricted / prohibited is not available in public sources, to the best of my knowledge and belief.

For all the reasons discussed above, (name of applicant) requests that the identified confidential information be protected / restricted / prohibited from public disclosure.

Within documents accompanied by an accompanying submission where only part of the documentation is deemed sensitive, the information deemed as sensitive shall be clearly identified to distinguish it from information within a document where the remaining information is non-sensitive.

(Signature of senior officer and title)

(Date)

Signed in the (city, town, etc.) in the (county, district, etc.) in the Province of _____ this (day)day
of (month) 20 (year).

Appendix B

CNSC Considerations in Determining Requests for Confidentiality

The final determination of whether or not information will be kept confidential rests with the Commission. The Commission will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Commission may consider in addressing confidentiality of filings made with the Commission are:

- (a) the potential harm that could result from the disclosure of the information, including:
 - i. prejudice to any person's competitive position;
 - ii. whether the information could impede or diminish the capacity of an applicant to fulfill existing contractual obligations;
 - iii. whether the information could interfere significantly with negotiations being carried out by an applicant; and
 - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;
- (b) whether the information consists of a trade secret or financial, commercial, scientific, technical, personal or other nature that is consistently treated in a confidential manner by the person providing it to the Commission and the person affected has not consented to the disclosure;
- (c) whether the information pertains to national, nuclear or public security;
- (d) whether the information is personal information;
- (e) whether the Information Commissioner, the Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential;
- (f) if an access request has previously been made for the information under ATI, whether the information was disclosed as a result of that request;
- (g) any other matters relating to ATI and ATI exemptions;
- (h) whether the type of information in question was previously held confidential by the Commission; and
- (i) whether the information is required by legislation to be kept confidential.

Information that is in the public domain will not be considered confidential. Information that is not identified as “confidential” or “protected” will not be considered confidential. For example, terms such as “proprietary”, “for internal use only”, “private”, etc. are not considered confidential designations and will be treated, as appropriate, as public documents.