

Copyright Board
Canada



Commission du droit d'auteur
Canada

PN 2024-013

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Practice Notice on Confidential Information

Confidentiality Order Required to File Confidential Information

[1] Unless information in a document has been designated as confidential or highly confidential, any document that is filed with the Board is placed on the public record. (*Copyright Board Rules of Practice and Procedure*, Rule 46(6)).

[2] Before a party files a document containing information designated as confidential or highly confidential, it is required to obtain a Confidentiality Order from the Board. (Rules 46(1), (2), and (3)).

Purpose and Effect of Confidentiality Order

[3] A confidentiality order specifies

- the classes of individuals who may view confidential information;
- the manner in which confidential information may be used, and any obligations regarding the safeguarding of the confidentiality of information; and
- the way in which confidential information is designated in documents.

[4] A confidentiality order does not create obligations on the Board. The Board's treatment of sensitive information is governed by statute and common law.

Confidential vs Highly Confidential Information

[5] Information may be designated as **confidential** or **highly confidential** (Subrule 46(2)). Parties should use these designations, where applicable, to specify the severity of injury that they believe would be likely to result from improper disclosure.

[6] A confidentiality order may set out different rights and obligations in respect of information designated as confidential and in respect of information designated as highly confidential. For example, a confidentiality order may specify that confidential

information can be seen both by parties' internal and external counsel, while highly confidential information may only be seen by parties' external counsel.

[7] Information designated as confidential or highly confidential must be identified according to the specifications of the *Practice Notice on Filing of Documents* ([PN 2019-001](#)).

Minimal Designation

[8] As much information should be on the public record as possible. Information should only be designated as confidential or as highly confidential to the extent the supplier believes disclosure of such information is likely to result in injury to the supplier. Only those portions of a document that could cause injury if disclosed should be designated as confidential or highly confidential. Other portions should not be so designated.

[9] On request from a party or on its own initiative, the Board may determine whether a designation of information as confidential or highly confidential is warranted (Rule 46(5)).

[10] The Board may order that a party request leave before designating information as confidential or highly confidential as well as provide an explanation that justifies the designation (Rule 47).

Requesting a Confidentiality Order

[11] Parties to a proceeding should file a request for a Confidentiality Order jointly.

[12] Parties seeking a confidentiality order must include a proposed confidentiality order with their request (Rule 46(1)).

[13] To expedite the Board's review of proposed confidentiality orders, parties are strongly encouraged to use one of the Templates, as the basis for their proposed confidentiality orders. Proposed confidentiality orders based on one of the Templates are to be accompanied by a document showing any changes from the text of the Template (i.e., a "blackline"), and a brief explanation of the purpose of those changes.

Confidential Information prior to Proceeding

[14] Prior to the commencement of a proceeding (see Rule 23), documents filed with the Board should not contain information designated as confidential (Rule 46(2)).

[15] Many of the documents filed prior to the commencement of a proceeding are intended to provide notice to potentially affected persons. This includes the Notice of Grounds for Proposed Tariff (Rule 15) and Notice of Grounds for Objection (Rule 18).

Template Confidentiality Orders

[16] In order to assist Parties in preparing their proposed confidentiality order, [three template confidentiality orders and a template confidentiality undertaking](#) are provided on the Board's website. These documents address various scenarios in which parties may request a confidentiality order. Each are described below.

[17] **Template Order A:** Intended for situations where all parties to the proceeding are already permitted to view all information designated as Confidential and Highly Confidential. This includes situations where the relevant information consists of an Agreement, to which all parties are signatories.

[18] **Template Order B:** Intended for situations where no specific restrictions are needed for who may view information designated as highly confidential. Any qualified recipient, including internal counsel and designated representatives, may view information designated as confidential and highly confidential. This includes situations where the disclosure to the parties is not likely to cause significant injury but where disclosure to the public is likely to cause significant injury to the supplier.

[19] **Template Order C:** Intended for situations where specific restrictions are needed for who may view information designated as highly confidential. Under this template, only the external counsel and external experts of parties may view information designated as highly confidential, other qualified recipients may not. This includes situations where the disclosure to the parties is likely to cause significant injury to the supplier.

[20] **Template Confidentiality Undertaking:** Intended for situations where the Board restricts who, among the parties, may view information designated as confidential or highly confidential. **Templates B and C** provide a mechanism to designate and qualify individuals as recipients of confidential and highly confidential information. As part of the process of becoming a qualified recipient, designated individuals must sign a Confidentiality Undertaking.