

Guide to Applying to Withhold Commercially Confidential Information from the NT EPA Public Register

Under the *Waste Management and Pollution Control Act*

Preface

This document has been created to provide guidance to those applying to have commercially confident information withheld from the public register.

The Northern Territory Environment Protection Authority (NT EPA) will periodically review and update these guidance notes where necessary, and any comments are more than welcome.

Inquiries or comments can be directed to:

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GPO Box 3675
Darwin NT 0801

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1.0 Introduction

The *Waste Management and Pollution Control Act* (WMPC Act) establishes a Public Register containing information relevant to the implementation of the Act such as approvals, licences, pollution abatement notices and environment management plans. This information will be placed on the Public Register unless the person directly affected applies for the information, or part of the information to be withheld on the basis that it is commercial in confidence.

This guide sets out the processes and steps needed to make a claim for information to be withheld from the Public Register on the basis that it is commercially confidential. The guide also provides detail on the criteria to be used by the NT EPA when assessing such claims.

2.0 When Can't You Make a Claim?

The grounds for withholding information from the Public Register relate only to commercial confidentiality. Information that has previously been made available lawfully to the public will not be eligible for protection as confidential information. Examples of information in the public domain include:

- books and articles;
- non-confidential submissions;
- Material Safety Data Sheets;
- information in the public domain which allows emissions type information to be derived; and
- presentation of material at conferences, meetings and other public forums.

A claim will not be successful merely because public release would result in some other form of detriment to the applicant, for example liability or loss of public confidence.

3.0 How to Make a Claim

The onus for demonstrating that information is commercially confidential rests with the applicant. Since documents will be routinely placed on the Public Register once they are finalised, you must make your application as soon as possible.

If you wish to claim confidentiality for any information that is required to be placed on the Public Register, you need to complete the form "*Application to Have Commercially Confidential Information Withheld from the Public Register*" (form EOFM-013-00). This application form is available at [CiC Appln](#)

The form asks various questions to substantiate your claim. In answering these questions you should provide information that is:

1. complete and contains reasonable evidence to support the claim; and
2. relevant to the document that is the subject of the application.

You should substantiate your answers with any available evidence. The more evidence you can provide the stronger your application will be. The value of the information you wish to protect will be established by your answers to the questions in this part of the form.

Once completed and signed, this form and the original of the approval to be extended or reduced in time and any attachments should be sent to:

**Northern Territory Environment Protection Authority
GPO Box 3675
Darwin NT 0801**

On receiving a claim, the NT EPA will:

- advise the claimant of receipt of the claim; and
- securely store all material relating to the claim until a determination has been made.

All information submitted with a claim will be treated as confidential until a determination on the claim has been made.

Before assessing the claim, the NT EPA will examine the claim and determine whether it provides detailed information of the type and nature required for a reasonable assessment. If your claim does not satisfy the minimum standards for consideration, the NT EPA will notify you in writing that, unless further evidence is provided, the relevant information will be placed on the Public Register. Any requested evidence should be provided as soon as possible – information will not be withheld from the Public Register for an extended period.

4.0 Assessment of your Claim

In assessing your claim, the NT EPA will apply the following criteria and processes. These processes are intended to establish:

- the existence of valuable commercially sensitive information in the document subject to the application;
- the likelihood that the commercially sensitive information would be compromised by its publication on the Public Register;
- whether failure to disclose the information would compromise the protection of the environment or public health; and
- whether the benefits of having public access to the information outweighs the potential for damage to the commercial interest.

5.0 Establishing Value

In evaluating the claim, the NT EPA will ascertain whether the commercially sensitive information is valuable. Criteria for establishing the value of the commercially sensitive information will include the following:

1. Has the commercially sensitive information relating to the claim been:
 - a. patented or copyright protected;
 - b. granted or rejected a commercial-in-confidence status by another body or country; or
 - c. sold as goods to another facility/business?
2. Has the owner identified a dollar value for the commercially sensitive information and is this an accurate figure? The criteria for accuracy will vary from case to case but tests could include:
 - a. dollars spent in developing/buying the commercially sensitive information; or
 - b. profit/competitive advantage arising from application of the commercially sensitive information.
3. What other steps has the owner of the commercially sensitive information taken to protect it? Steps could include:
 - a. having taken action (documented) against previous attempts to acquire the relevant commercially sensitive information; or
 - b. security vetting employees who are using or know of the commercially sensitive information.
4. Is the commercially sensitive information or information similar to the commercially sensitive information (i.e.. has the same effect on the market) known outside the owner's business? The assumption is that if the market already has access to the commercially sensitive information then it is not really a secret and as such further disclosure would not diminish the value of the 'commercially sensitive information'. This should be established, with due discretion by:
 - a. a search of relevant datasets (publications, etc.) for the commercially sensitive information; or
 - b. advice from other and overseas organisations as to whether similar claims have been sought.
5. How easy or expensive might it be for others to acquire the information?

6.0 Establishing Relevance

Having reached a decision as to the value of the commercially sensitive information claimed, the NT EPA will apply the following criteria to determine whether the information proposed to be released on the Public Register is in any way relevant to the commercially sensitive information.

1. Is it possible that the commercially sensitive information of value will be disclosed by the document to be included on the Public Register? For example:
 - a. Would it be practicable for competitors to reverse engineer information contained in the document to deduce the commercially sensitive information? One means of addressing this criteria is to compare the cost to reverse engineer the information to the cost of developing the commercially sensitive information;
 - b. Is the information relating to the claim such that its very disclosure would inherently indicate the potential existence of commercially sensitive information? or
 - c. Is the information relating to the claim so unusual that even releasing it in generic form would compromise the commercially sensitive information?
2. Assuming that commercially sensitive information would be disclosed by the inclusion of the information on the Public Register, the degree to which this would degrade the commercially sensitive information will need to be established.

7.0 The Decision

There are four possible outcomes following the assessment of a claim:

1. the document subject to the claim may be completely withheld from the Public Register;
2. the document subject to the claim may be partly withheld from the Public Register;
3. information in the document subject to the claim may be modified in such a manner as to protect commercial sensitivities and the modified document then placed onto the Public Register; or
4. the document subject to the claim may be placed onto the Public Register in an unmodified form (i.e. the claim has been unsuccessful).

You will be informed in writing of the outcome of the claim as soon as possible after a determination has been made.

8.0 Review of Claims

It is expected that, having granted a claim for confidentiality, the NT EPA will periodically review the claim to determine whether the circumstances are still relevant. The applicant will be notified of any such review and be provided with an opportunity to contribute relevant information.