

CONFIDENTIALITY RULES

In the exercise of its principal functions and powers the ICT Authority will engage in public consultation. It is important for the ICT Authority in pursuing public consultation that the public and stakeholders not only make their views known but also that they have access to submissions made by all parties. This assists parties in knowing the various views expressed and considered by the ICT Authority. That there exists a public record, which can be viewed by all, is an important element to the objective of openness and transparency of the regulatory process.

Nevertheless, some parties may make submissions which they feel are important to the ICT Authority's deliberations but which they would prefer, for substantive reasons, not to include on the public record. The ICT Authority may also request a party to submit information which such party considers confidential in nature. This can involve either the whole of a document or only a portion. The Authority recognises that there will be instances where it must consider the appropriateness of a request to accept a submission, or part thereof, in confidence or whether to place the information in issue on the public record as its disclosure is in the public interest.

In order to arrive at a just and reasonable balance between the requirements for a public record and the need to keep information confidential to a party, the ICT Authority is of the view that it is well advised and appropriate to invite public comments on the subject of confidentiality, in general, and the Confidentiality Rules, in particular. Following receipt and review of comments the ICT Authority proposes submitting to the Governor in Council its recommendations for Confidentiality Rules to be formalised by way of publication in the Gazette.

The ICT Authority invites submissions on the following:

1. Draft Confidentiality Rules which are attached.
2. The appropriateness of having some material submitted to the ICT Authority excluded from the public record.
3. Whether the following type of information is of a nature which the ICT Authority should view as appropriately confidential:
 - Trade secrets
 - Financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the party submitting it.
 - Information, which if disclosed, could reasonably be expected to result in significant financial loss or gain or significantly prejudice competitive positioning or affect contractual or other liabilities.
4. Is there any other information than noted above which the ICT Authority should view as appropriately confidential?
5. In the event the ICT Authority concludes information is appropriately confidential, on what basis should such information none the less be placed on the public record?

6. In the event the ICT Authority concludes information is appropriately confidential, should it require abridged versions for the public record?
7. Is the process established in the draft Confidentiality Rules sufficient to deal with claim for confidentiality? Are the time frames noted for such process to take place reasonable?
8. Any other matters which would be beneficial for the ICT Authority to consider in recommending a confidentiality model to the Governor in Council.
9. Any other matters pertaining to confidentiality which are desired to be brought to the attention of the ICT Authority.

As to the confidentiality model noted above, the ICT Authority requests written submission to be received on or before the 15th day of June 2003.

Written submissions must be forwarded to:
Managing Director
Information and Communications Technology Authority
P.O.Box 2502GT
Grand Cayman
Cayman Islands

Or by e-mail to:

consultations@icta.ky

Or by fax to:

1-345-945-8284

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW, 2002**

Made by the Governor in Council under section 70 of The Information and Communications Technology Authority Law, 2002

THE CONFIDENTIALITY RULES, 2002

1. (1) These Rules may be cited as the Confidentiality Rules, 2002. Citation
2. (1) For the purposes of these Rules, the definitions contained in section 2 of the ICTA Law shall apply. Definitions
 - (2) In these Rules:

“Confidential” shall have the meaning prescribed for it in section 4 of these Rules;

“ICTA Law” means the Information and Communications Technology Authority Law, 2002;
3. (1) These Rules shall come into force on the date of their publication in the Gazette. Commencement
4. (1) Any licensee may request that information provided to the Authority be designated “Confidential” by the Authority if the: Confidential Information Designation
 - (a) Information is a trade secret;
 - (b) Information is financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the person who submitted it; or
 - (c) the disclosure of the information could reasonably be expected-
 - (i) to result in significant financial loss or gain to any person;
 - (ii) to prejudice significantly the competitive position of any person; or
 - (iii) to affect contractual or other liabilities of any person.
5. (1) The following rules will apply to the designation of confidential information under section 4. Treatment of Confidential Information
 - (a) Where a document is filed with the Authority by a party in relation to any proceeding, the Authority may place the document on the public record unless the party filing the document asserts a claim, at the time of such filing, that the document, or a part thereof, is confidential.
 - (b) Any claim for confidentiality made in connection with a document, or a part thereof, filed with the Authority or requested by the Authority or any party shall be accompanied by the reasons therefore, and, where it is asserted that specific direct harm would be caused to the party claiming confidentiality, sufficient details shall be provided as to the nature and extent of such harm.
 - (c) A party claiming confidentiality in connection with a document, or a part thereof, shall file with the Authority both a complete and a proposed redacted version of the document, the latter to be placed, subject to the Authority’s determination, on the public record.

- (d) A claim for confidentiality referred to in subsection (b) shall be placed on the public record and a copy thereof shall be provided on request to any party, unless the Authority determines it is not in the public interest to do so.
- (e) Where a claim for confidentiality is made in connection with a document, or a part thereof, that has not been filed by a party, the Authority may require the party to file the document and, after the document has been filed, the document shall
- (i) be reviewed by the Authority in confidence; and
 - (ii) be dealt with as provided in subsections 6(a) or 6(b), whichever is applicable.
- (f) Any party wishing the public disclosure of a document, or a part thereof, in respect of which there has been a claim for confidentiality may file with the Authority
- (i) a request for such disclosure setting out the reasons therefore, including the public interest in the disclosure of all information relevant to the Authority's regulatory responsibilities; and
 - (ii) any material in support of the reasons for public disclosure.
- (g) A copy of a request for the public disclosure of a document, or a part thereof, shall be served on the party claiming confidentiality and that party may, unless the Authority otherwise determines, file a reply with the Authority within 7 days after the date of service of the request and shall, where a reply is filed, serve a copy thereof on the party requesting public disclosure.
- (h) Where the Authority determines that a document, or a part thereof, in respect of which there has been a claim for confidentiality be placed on the public record, the party claiming confidentiality shall have 7 days to file a reply, unless the Authority otherwise determines.
- Specific Direct Harm 6. (a) Where the Authority is of the opinion that, based on all the material before it, no specific direct harm would be likely to result from disclosure, or where any such specific direct harm is shown but is not sufficient to outweigh the public interest in disclosing the document, the document shall be placed on the public record.
- (b) Where the Authority is of the opinion that, based on all the material before it, the specific direct harm likely to result from public disclosure justifies a claim for confidentiality, the Authority may
- (i) order that the document, or a part thereof, not be placed on the public record;
 - (ii) order disclosure of a redacted version of the document, or a part thereof; or
 - (iii) order that the document, or a part thereof, be disclosed to parties at a hearing to be conducted in camera.