

Supplying confidential or commercially sensitive information under the HSNO Act

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This guide explains the legal protections for confidential or commercially sensitive information we may ask you to provide us and how you can help us identify and safeguard it.

We, the EPA, sometimes ask for confidential or commercially sensitive information as a part of our work under the Hazardous Substances and New Organisms Act:

- to ensure hazardous substances are used safely and appropriately in New Zealand; and
- to assess and manage the risk of introducing new organisms into New Zealand.

At the same time, we are required to follow the rules for holding and sharing such information.

We rely on having enough information to ensure assessments or reviews of hazardous substances are accurate and thorough. As a part of this work, we ask manufacturers, suppliers and users for up-to-date scientific information about particular chemicals, and how they are being used (calls for information). We also ask for information to support applications to import or manufacture hazardous substances or to import, develop, field test or release a new organism in New Zealand.

We appreciate some of the information you provide may be confidential or commercially sensitive, and we have processes in place to look after such information carefully and appropriately.

New Zealand law allows any New Zealand citizen, resident, person who is in New Zealand, or company (incorporated in, or with a place of business in New Zealand) to ask us to see or be given a copy of the information we hold. So, if we receive a request under the Official Information Act 1982 (**the OIA**) generally we must make information available unless there is a good reason to withhold that information, or parts of it.

We understand this might cause you concern about sharing your information with us. However, the law allows for certain situations where your information will be protected from being released to the public or to a specific person making a request under the OIA. Which legislation applies will depend on the specific circumstances.

Our responsibility to you

We take the security of your information seriously. We store all information provided to us in a password-protected document management system. All hard copy information is held in secure areas with swipe-card access.

Generally, we will not release any information where to do so would disclose a trade secret or would likely unreasonably prejudice the commercial position of the person who supplied the information or the person who is the subject of the information. However, if the public interest in disclosure outweighs the need to withhold the information, then the information must be released.

If we receive an OIA request that could involve confidential or commercially sensitive information you shared, we will make efforts to consult with you. We will let you know we have received the request and will ask if you believe there are grounds to withhold the information. We will take your views into account

when making our decision. We may either refuse the request and withhold the information or release all or part of the information requested.

Our responsibility to the general public

The OIA states that information shall be made available unless there is good reason for withholding it. So, if we receive a request for information from the public under the OIA, we must carefully weigh up whether there are good reasons for withholding the information, and then, if applicable, we consider whether public interest outweighs any need to withhold the information.

How you can help us

When providing information to us, it is important to clearly identify the parts that contain a trade secret, commercially sensitive or confidential information by clearly labelling that information.

It is also important that you explain why this information should be considered confidential, commercially sensitive or a trade secret. If you can give clear reasoning when the information is provided, it will help us assess whether to release the information. Explaining this at the same time as providing the information also avoids you having to explain it later within a tight timeframe. Examples of relevant factors to address in your reasons are set out below.

If you consider the information you are providing is a trade secret, please detail the:

- extent to which the information is known outside the business, or by employees and others involved in the business (eg, confidentiality agreements)
- extent of the measures taken to guard the secrecy of the information (eg, physical or IT measures)
- amount of effort and money expended in developing the information
- value of the information to the business
- ease or difficulty with which the information could be properly acquired or duplicated by others.

If you consider making the information available will cause commercial prejudice, please:

- confirm whether the business is a profit-making organisation and has a “commercial position” to protect the information from competitors in the market
- identify the prejudice likely to result to the business’s commercial position if the information is made available
- include an assessment of the likelihood that this prejudice would result from the disclosure of information
- detail why the prejudice would be unreasonable
- set out reasons why disclosure would be so likely to cause the prejudice that it is necessary to withhold it.

If you consider the information you are providing is confidential, please:

- confirm whether the information is not generally known or readily available to the public and should therefore be treated in confidence
- explain why disclosure of the information would be likely to prejudice the supply of similar information
- set out an assessment as to whether this likelihood is a real and substantial risk.

How the law protects information

New Zealand law includes grounds for protecting confidential or commercially sensitive information from release, including:

- the Official Information Act 1982
- the Hazardous Substances and New Organisms Act 1996 (HSNO Act)
- the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM Act)
- the Medicines Act 1981.

Official Information Act

Under the OIA, there are potential grounds to protect commercial information (by withholding it) where making it available would:

- disclose a trade secret; or
- be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information (commercially sensitive information).

Information supplied under an obligation of confidence may also be withheld under the OIA if making it available would likely prejudice the supply of similar information (or information from the same source), where it is also in the public interest that such information continues to be supplied.

Guidance from the Ombudsman contains further information on commercial information provisions in the OIA.

Other reasons for refusing OIA requests – commercial information

There is a general presumption that disclosure of trade secrets is damaging. Therefore, if a company can show the information is a trade secret, or can explain how releasing the information would be likely unreasonably to prejudice its commercial position, there will be a strong case to weigh against the public interest in releasing that information.

Further guidance from the Ombudsman contains information on the confidentiality provision in the OIA.

Other reasons for refusing OIA requests – confidentiality

If a company supplying information to us can provide evidence the information is not publicly available (so that a general obligation of confidence exists), and that any disclosure would deter them from supplying information us in future, then we may be able to withhold that information.

The HSNO Act, the ACVM Act and the Medicines Act

Under the HSNO Act, any information supplied to the EPA is not subject to the OIA where:

- that information is likely to relate to an application for approval for new hazardous substances as well as reassessments of hazardous substances already in use or to a new organism application; and
- the relevant application has not been lodged.

The OIA will apply after the application for approval (for a new hazardous substance or a new organism) or reassessment of a hazardous substance has been lodged.

The HSNO Act also prevents us from proactively releasing information relating to an application during a public notification: if we consider releasing that information would disclose a trade secret or is likely to unreasonably prejudice the commercial position of the person who supplied (or who is the subject of) the information.

The HSNO Act also provides protection for information supplied for applications for hazardous substances or new organisms that are or were the subject of innovative trade name product (TNP) applications under the ACVM Act. For these hazardous substances or new organisms, if confidential

information is supplied to the EPA for an application under the HSNO Act, then the confidential information provisions and protected periods from the ACVM Act (5 or 10 years from grant or refusal of the TNP application) apply under the HSNO Act. Similar provisions apply to innovative medicine applications under the Medicines Act.

For questions

Contact us	
New Organisms For general queries about providing confidential or commercially sensitive information or application-specific questions	neworganisms@epa.govt.nz
Hazardous Substances For general queries about providing confidential or commercially sensitive information or application-specific questions	HSApplications@epa.govt.nz
For queries about providing confidential or commercially sensitive information relating to a current reassessment of a hazardous substance	Reassessments@epa.govt.nz

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