



Confidential information

In our role, as Western Australia's independent economic regulator, the ERA manages a wide range of information, including confidential information, which is essential for our work.

Our regulatory functions require us to understand the different perspectives of the entities we regulate and how our regulatory decisions may affect different stakeholders. To make properly informed decisions, the ERA may need access to confidential and commercially sensitive information from relevant parties.

As a general rule, the ERA considers it in the public interest to publish information that has been used to inform our decisions. In some cases, there may be a legal obligation to publish this information. However, we understand there are times when information provided to us is confidential and needs to be protected. In these circumstances, you can make a claim for confidentiality.

The ERA requires external parties to promptly identify confidential information and engage with the ERA in good faith when making a confidentiality claim to ensure a timely resolution.

Because of the public interest in publishing information that the ERA has considered, it is essential that you only make a confidentiality claim over information where you have a proper legal basis to do so, such as where the information is commercially sensitive and the release of the information would cause detriment to you or third parties.

This statement provides general guidance about making a confidentiality claim but does not override any legal requirement concerning confidentiality. It is your obligation to check relevant legislation and whether the ERA has published any other specific guidelines which could affect the confidentiality processes and requirements specific to your circumstances.

What is confidential information

In general terms, confidential information refers to information that is not public knowledge and exhibits the necessary 'quality of confidence'. The information cannot be trivial or publicly available, and it must be specific enough to warrant protection.

Confidential information may include:

- Proprietary or business information (e.g. market sensitive cost inputs or information about profit margins or pricing structures).
- Contracts with third parties, where terms are agreed to be confidential.
- Intellectual property including trade secrets.

Information may also be defined or classified as confidential information under applicable legislation.

We securely protect and store all confidential information. Staff only access confidential information when required for their work. The *Economic Regulation Authority Act 2003* includes a general obligation for all our staff to keep information obtained at work confidential, with legal consequences (a fine or imprisonment) should confidential information not be protected.

How to make a confidentiality claim

We recommend that you contact us to discuss any confidentiality claims **before** you submit any confidential information to us.

A discussion about submitting confidential information, prior to making your submission, allows for:

- A better understanding of the nature of the information and why it is claimed to be confidential.
- A discussion of the options available to provide the confidential information and facilitate its disclosure in some form. For example, can the information be provided in a way to maintain confidentiality when published, such as aggregating customer data to avoid individual customer data being disclosed, redacting certain parts, etc.
- When you provide information to the ERA which you regard as confidential, you must:
- Clearly specify the relevant section(s) of the document or information that you regard as confidential. A blanket confidentiality claim over an entire document or the entirety of information provided should not be made unless all such information is genuinely regarded as confidential.
- Explain the basis on which the confidentiality claim is being made including particulars of any harm or detriment that would result from disclosure of the information.

If a document submitted to the ERA contains confidential information, a public version of that document must also be provided for publication where required by applicable legislation, rules or guidelines. Even if not required by applicable legislation, rules or guidelines, the ERA requests that a public version of the document(s) be provided. The public document is to be substantially the same as the confidential document in form and format, but have the confidential information removed (redacted).

If the ERA has provided specific guidance on making a confidentiality claim (for example, in relation to a consultation process), you should also review this before submitting your claim.

Circumstances where the ERA may or must disclose confidential information

There are circumstances in which we may or must disclose confidential information, including where disclosure of confidential information is authorised or required by law or in response to a Court order or subpoena.

We may determine that it is in the public interest for us to disclose confidential information, in which case any party who may be adversely affected will be notified of any intended disclosure and will be given the opportunity to make a further submission about their confidentiality claim.

Documents in the possession of the ERA are also subject to the requirements of the *Freedom of Information Act 1982 (FOI Act)*, which means that the ERA may be required to grant access to documents in its possession. The FOI Act requires the ERA to consult, as far as practicable, with you before it discloses information in response to an application under the FOI Act where a document contains:

- Information concerning your trade secrets.

- Information (other than trade secrets) that has a commercial value to you.
- Any other information concerning your business, professional, commercial or financial affairs.

Further, the disclosure of some information may be necessary for open and transparent decision-making. In these circumstances, the ERA may:

- Release aggregated data.
- Disclose the substance of submissions rather than publishing individual submissions or identifying the information provider.

Further information

Further information about how we manage requests for confidentiality can be found in specific guidelines or by contacting the officer named in the invitation for submissions at info@erawa.com.au.