

OFFICIAL

Commercial-in-Confidence Notice: Handling of commercial-in-confidence information

The Net Zero Economy Authority (NZEa) is committed to building and maintaining trust with stakeholders. This notice outlines **how the NZEA handles information provided either voluntarily or compulsorily on a -commercial-in-confidence basis in relation to our statutory functions and processes concerning Part 5 of the *Net Zero Economy Authority Act 2024* (Cth), the Energy Industry Jobs Plan (EIJP).**

We aim to be as transparent as reasonably practicable while upholding our legal obligations to protect confidential and commercially sensitive information. This balance is crucial to serving the Commonwealth's interests, maintaining its reputation, and ensuring that businesses are not deterred from engaging with the NZEA.

1. Legal framework and obligations

The NZEA manages information in line with relevant Australian laws and government policies. These include, but are not limited to:

- *Net Zero Economy Authority Act 2024* (Cth)
- *Privacy Act 1988* (Cth), including the Australian Privacy Principles
- *Freedom of Information Act 1982* (Cth) (FOI Act)
- *Crimes Act 1914* (Cth)
- Australian Government Protective Security Policy Framework (PSPF)
- Australian Public Service Code of Conduct
- *Competition and Consumer Act 2010*
- *Corporations Act 2001*
- Other relevant legislation, such as the *Copyright Act 1968* (Cth) and *Archives Act 1983* (Cth), where applicable.

As part of the Commonwealth, the NZEA is required to take measures to protect information under the PSPF. All information received or generated by the NZEA that is not publicly available is treated as Official Information. The NZEA classifies Official Information using the Australian Government Classification System, applying appropriate Dissemination Limiting Markers (DLMs) to indicate protection and special handling requirements. Information considered commercial-in-confidence will typically be classified as 'OFFICIAL' or 'OFFICIAL SENSITIVE', depending on its nature and potential impact of its compromise.

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2. What is commercial-in-confidence information?

Commercial-in-confidence information is any information that is not publicly available, the disclosure of which may undermine the economic interests or competitive position of the owner of the information.

This may include, but is not limited to:

- Trade secrets and proprietary information.
- Information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.
- Information concerning the lawful commercial or financial affairs of a person, organisation, or undertaking, where disclosure could unreasonably affect them.

Examples of information that may be treated as commercial-in-confidence include:

- Employee information and workforce planning.
- Financial arrangements and commercial transactions.
- Tender bids, pending contracts, and contractual dates.
- Redundancy and transition plans.
- Details of proposed new activities or business dealings.
- Capital and operating expenditures.
- Specific details of operational processes, methodologies, or intellectual property.
- Information about the volume or value of projected or actual sales.
- Information or inquiries in relation to future plans or applications that are not yet public.

Examples of information generally not considered commercial-in-confidence include:

- Information already in the public domain (e.g., company advertising, publicly available reports).
- Information that is required by law to be made public.

The NZEA will consider the above in determining whether particular information is commercial-in-confidence at any given time, acknowledging that the status of information may change over time (e.g., if it becomes publicly available).

3. Collection of information

The NZEA collects commercial-in-confidence information only when it is reasonably necessary for, or directly related to, the EIJP process or its other statutory functions. This information may be provided in one of two ways:

- Voluntarily: For example, information provided in support of a Community of Interest (COI) process or other stakeholder engagement.
- Required: For example, under a formal notice (section 64 of the NZEA Act) from the CEO to produce documents, or as part of a contractual agreement.

4. Identification and determination of commercial-in-confidence information

When providing information to the NZEA that you believe should be treated as commercial-in-confidence, you must make a written request at the time you provide the information. This request should:

- Clearly state that the information is commercial-in-confidence.
- Specifically identify the information or sections of documents claimed as commercial-in-confidence.
- Provide clear reasons why the information should be treated as commercial-in-confidence (e.g., it is a trade secret, its disclosure would diminish its value or unreasonably affect commercial affairs).

The NZEA will review information provided to ascertain whether it should be treated as commercial-in-confidence. The NZEA will make the final determination in line with government policy and its legal obligations.

5. Protection and management of information

The NZEA takes robust measures to prevent the unauthorised use or disclosure of information received in confidence. All information is managed in compliance with relevant Commonwealth security requirements, including the PSPF.

Key aspects of the NZEA's protection and management include:

- Record keeping: Maintaining accurate and consistent records of all information received, including details of its classification, handling, and any disclosures.
- Access control: Limiting access to commercial-in-confidence to only those officers, contractors, or authorised individuals who require it to perform their duties.
- Confidentiality agreements: Individuals who are not Australian Government employees (e.g., external experts, contractors, consultants) who receive commercial-in-confidence from the NZEA will be required to sign a deed of confidentiality. This deed will include provisions on non-disclosure to third parties and secure management and disposal of confidential material.
- Secure storage: Storing all records, including commercial-in-confidence, in the NZEA's secure IT systems in accordance with government security protocols.
- Purpose limitation: Information provided to the NZEA will only be used for the purpose for which it was collected, or as otherwise required or permitted by law.

6. Disclosure of information

The NZEA will not disclose commercial-in-confidence information unless there is a need to do so. The NZEA may be required or authorised to disclose such information in certain circumstances, including:

- To the Fair Work Commission: Information collected under a notice made under section 64 of the Act, may be disclosed in a Fair Work Commission application or during a COI process, in accordance with the CEO's statutory obligations.

- Required or authorised by law: Where disclosure is mandated by legislation (e.g., the FOI Act, court orders, subpoenas) or a lawful requirement of any government or governmental body, authority, or agency (e.g., parliamentary requests, audits by the Australian National Audit Office).
- Performance of functions and duties: Where disclosure is necessary for NZEA officers to perform their functions or duties or exercise powers under the *Net Zero Economy Authority Act 2024* (Cth) or other relevant legislation.
- Public accountability: For purposes of public accountability, including disclosure to other Government Agencies, Parliament or a parliamentary committee, or a Commonwealth Minister.
- Public interest: Circumstances where the NZEA can justify the release in the public interest and it is lawful to do so. The NZEA will consider all relevant factors before making such a determination.
- With consent: Where the owner of the information has provided explicit written consent for its disclosure.
- To external advisors: For the purposes of seeking expert advice, provided that the recipients are under a confidentiality obligation (e.g., through a deed of confidentiality).

Information provided on a voluntary basis will be handled in accordance with permissions given by owner.

Where the NZEA discloses commercial-in-confidence information to another person, we will notify the person that the information is commercial-in-confidence and should only be used for the purposes for which it has been disclosed.

If you assert that particular information is commercial-in-confidence, the NZEA might take a different view. If the NZEA then decides to disclose the information, we will notify you of the decision and provide reasons for the decision. The NZEA will not disclose the information until a reasonable period has passed to allow you an opportunity to provide further supporting evidence or seek a review of the decision where available.

Freedom of Information (FOI) requests

The FOI Act provides any person with a right to seek access to documents held by Commonwealth agencies, including the NZEA.

While the NZEA is committed to protecting commercial-in-confidence material, there may be circumstances where we are legally required to release documents under the FOI Act. The FOI Act includes specific exemptions that may apply to commercial-in-confidence information, such as for information the disclosure of which would:

- Found an action for breach of confidence (section 45(1)).
- Disclose a trade secret (section 47(1)(a)).
- Unreasonably affect a person's lawful business or professional affairs (section 47G(1)(a)).

When an FOI request is received for information that may be commercially confidential, the NZEA is generally obliged to consult with you as the owner of the information. You will be provided with an opportunity to make a submission as to why the information should be exempt from release under the FOI Act. The NZEA will take your views into account when deciding whether to grant access to the documents, but the final decision rests with the NZEA.

Please be aware that both the FOI applicant and the third party consulted (e.g., the owner of the information) generally have a right to seek a review of any decision made by the NZEA.

7. Record keeping for commercial-in-confidence disclosure

The NZEA will maintain records in relation to every disclosure of CIC, including:

- The name and address of the person or entity to whom the information was disclosed.
- The nature of the information disclosed.
- The date of disclosure.
- The reason for disclosure.

These records will be retained for a period consistent with Commonwealth record-keeping requirements.

8. Consequences of not providing information

If the NZEA is unable to collect the commercial-in-confidence information necessary for the EIJP process or other statutory functions, we may be unable to effectively support your involvement, including in the COI process. This could hinder our ability to properly analyse the impacts of any regulatory burden on your organisation or business, or to fully assess applications or proposals.

9. Contact

For more information about how the NZEA manages or handles your commercial-in-confidence information, and how to make an enquiry or complaint see the [NZEA Privacy Policy](#) or contact us at privacy@nzea.gov.au or eijpcompliance@nzea.gov.au.