



## Broadcasting and Telecom Information Bulletin CRTC 2010-961

PDF version

Ottawa, 23 December 2010

### Procedures for filing confidential information and requesting its disclosure in Commission proceedings

*This information bulletin describes the four-step process for filing confidential information in Commission proceedings. It also provides, as an appendix, a list of examples of information that can generally be designated as confidential pursuant to the Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure.*

*Effective 1 April 2011, this information bulletin replaces the Guidelines respecting the confidential treatment of annual returns and material or information filed in support of a broadcasting application before the Commission, Circular No. 429, 19 August 1998, and the Practice Note Respecting Claims of Confidentiality and Requests for Disclosure in the Course of a Proceeding, Telecom Practice Note, 8 October 1998.*

#### Introduction

1. Sections 30 to 34 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) and sections 38 and 39 of the *Telecommunications Act* set out a process by which parties to Commission proceedings may file information on the record of a public proceeding in confidence.<sup>1</sup>
2. This process has four steps:
  - First, the information is filed with the Commission and designated confidential.
  - Second, another party or the Commission can request that the information be disclosed, and the party who designated the information as confidential can reply to the request.

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<sup>1</sup> The Commission also receives information outside the context of a proceeding that persons may wish to have treated on a confidential basis. The most common example is information filed by a broadcasting licensee or a telecom service provider as part of its annual return. As there is no proceeding ongoing, the Rules of Procedure do not apply in these circumstances. In both cases, the rules regarding the filing and disclosure of confidential information in sections 38 and 39 of the *Telecommunications Act* (for telecom) and in the *Access to Information Act* (for both telecom and broadcasting) govern.

- Third, based on the request to disclose and the party’s reply, the Commission will determine whether it will disclose the information or require it to be disclosed.
  - Fourth, in broadcasting matters, where the Commission has determined that the information should be disclosed, an applicant can confirm its designation of the information as confidential, in which case the information is not disclosed and it is not considered by the Commission.
3. This information bulletin describes this process in greater detail and provides, in an appendix, a list of examples of information that can generally be designated confidential pursuant to the Rules of Procedure. Effective 1 April 2011, this information bulletin replaces the *Guidelines respecting the confidential treatment of annual returns and material or information filed in support of a broadcasting application before the Commission*, Circular No. 429, 19 August 1998, and the *Practice Note Respecting Claims of Confidentiality and Requests for Disclosure in the Course of a Proceeding*, Telecom Practice Note, 8 October 1998.

### **Step 1: Filing information that is designated as confidential**

4. A party filing information can “designate” it as confidential at the time it is filed with the Commission (section 31) if it falls into one of the following categories:
- a) information that is a trade secret;
  - b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
  - c) information the disclosure of which could reasonably be expected
    - i. to result in material financial loss or gain to any person;
    - ii. to prejudice the competitive position of any person; or
    - iii. to affect contractual or other negotiations of any person.
5. At the time that the party files the information it designates as confidential, it must provide an abridged version of the document along with an explanation of how the information falls into a category of information listed in section 31. The party must provide a detailed rationale to explain why the disclosure of the information is not in the public interest (section 32(1)).
6. In articulating these reasons, parties must address the test for disclosure discussed below. Generic statements such as “the release of this information to competitors would result in specific, direct harm to the company” are not sufficient. Parties must provide sufficient reasons to allow meaningful analysis by the Commission or another party who may wish to request disclosure of the information. Parties will generally not be permitted to provide additional reasons in their reply to such a request.

7. However, to make the process for designating information more efficient, the Commission will generally accept as reasons a statement that the information is of a type listed in the appendix to this information bulletin. Parties doing so must keep in mind that this list is only a guideline. If the Commission or another party requests disclosure of the information, the party must be prepared to explain in its reply why the disclosure of the information is not in the public interest in the context of the particular proceeding.
8. The abridged version (Section 32(2)) of a document must omit only that information which is designated confidential. Information that is not itself inherently sensitive, such as tables of contents, headings and sentences that do not themselves contain information designated confidential, should not be omitted from the document. The abridged version should not be edited in a manner that makes it difficult or impossible to determine the places where, and the extent to which, information has been omitted. Documents should not be reformatted; for example, where text is removed, the space occupied by the omitted material should be left blank. Also, it is helpful when the symbol “#” is inserted where abridged information has been omitted.
9. The confidential version of the document must be filed separately and must be marked “CONFIDENTIAL” on each page. If the document is filed electronically, each file containing confidential information must include “confidential” in the file name.
10. The abridged version of the document and the reasons for the designation of information as confidential will be placed on the public record of the proceeding.

## **Step 2: Requesting disclosure of information designated as confidential**

11. If the Commission or another party believes that the designated information should be made public pursuant to the test for disclosure, the Rules of Procedure set out a process to be followed.
12. The Commission can request disclosure by sending the request directly to the party that designated the information as confidential (section 33(4)). A party must file its request with the Commission and serve the person who designated the information as confidential (sections 33(1) and (2)). The request must explain why the Commission or the party believes it would be in the public interest to disclose the information.
13. The party who filed the designated information can file a reply with the Commission within 10 days, serving any party who requested disclosure of the designated information (sections 33(3) and (4)).

### **Step 3: Determination whether information designated as confidential will be disclosed**

14. The Commission may disclose or require the disclosure of information designated as confidential if:
  - it does not properly fall within one of the categories of information that can be designated confidential (section 31(1)); or
  - it was properly designated confidential but disclosure is in the public interest (section 34(1)).
15. Note however that, as set out in step 4 below, a broadcasting applicant has the opportunity to confirm the designation and prevent disclosure (section 34(2)).
16. In determining whether disclosure of the information is in the public interest, the Commission will consider whether the information would be likely to result in specific direct harm and whether that harm outweighs the public interest in disclosure. Where the specific direct harm does not outweigh the public interest in disclosure, the Commission will generally require that the information be disclosed.
17. Generally, the Commission has found that the more the information is disaggregated or the greater the degree of competition, the more likely it is that the direct harm will outweigh the public interest and that the information should not be disclosed. On the other hand, the Commission has found that the greater the importance of the information to the ability of the Commission to obtain a full and complete record on which to make its decision, the more likely it is that the direct harm will not outweigh the public interest and that the information should be disclosed.
18. Note that information that has been made public in other contexts, including information that is disclosed due to securities regulation or put on the public record by the Federal Communications Commission, will generally not be accepted as information designated as confidential.
19. Because the Commission conducts similar proceedings on a regular basis, it is possible to have a good idea of the types of information that the Commission will generally require to be disclosed or maintain as confidential. In order to provide certainty and predictability, the Commission has created a list of such information, which can be found in the appendix to this information bulletin.
20. This list is a guideline only. The determination as to whether information should be disclosed is based on the specific circumstances of any particular case, and the fact that information has not been disclosed in the past does not mean that, with a different set of circumstances, similar information will not be disclosed in the future. It is also important to remember that this list is not exhaustive. Instead, it simply lists the most common types of information that parties file with the Commission.

21. Where the Commission has determined that information should be disclosed, the party may be required to file a revised abridged version. The party must file the revised document within the time limit established by the Commission.

**Step 4: Confirmation of designation in broadcasting matters**

22. In broadcasting, an applicant who filed information that the Commission has determined should be disclosed may choose to confirm that it continues to oppose disclosure of the information. In this case, the Commission will not disclose or require the disclosure of the information. However, the information is no longer admissible as evidence and the Commission will not consider it in making its decision (section 34(2)). Therefore, the applicant must accept that the Commission may deny the application on the basis that it does not have enough information on the record.

Secretary General

# Appendix to Broadcasting and Telecom Information Bulletin CRTC 2010-961

## Disclosure Guidelines

### Broadcasting proceedings

#### Radio and television

	Public	Confidential
<b>Annual Returns</b>		X
<b>Financial Statements<sup>2</sup>:</b>		
➤ Historical financial statements of other than public companies <a href="#">(See note 3)</a>		
• personal holding companies		X
• licensee companies		X
• other operating companies		X
➤ Historical financial statements of public companies	X	
➤ <b>Projections</b> (financial statements and assumptions): <a href="#">(See note 4)</a> :		
i) for projection years remaining in the current licence term: <a href="#">(See note 3)</a>		
• for operations which are the subject of the application:		
○ renewals		X
○ amendments	X	
○ asset/share transfers		X
• for related licensed operations		X
• for combined operations of licensed undertakings		X
ii) for projection years in the prospective licence term: <a href="#">(See note 5)</a>		
• for operations which are the subject of the application:		

<sup>2</sup>“Financial statements” means any element that is included in the financial statements in accordance with generally accepted accounting principles and any other formal accounting statement, and supporting documentation, notes and assumptions, either historical income or forecast.

	Public	Confidential
○ new licences	X	
○ renewals	X <a href="#">(See note 6)</a>	
○ amendments	X	
○ asset/share transfers	X	
• for related licensed operations		X
• for combined operations of licensed undertakings		X
<b>Evidence of Financial Capacity<sup>3</sup>:</b>		
Personal net worth statements <sup>4</sup>		X
Annual reports and historical financial statements of public companies	X	
Letters from bankers and other credit granting institutions	X	
Bank loan and other financing agreements	X	
Letters from auditors and/or investment dealers	X	
Letters of commitment to purchase debt and/or equity securities	X	
<b>Employee information:</b>		
➤ names of prospective employees <sup>5</sup> and/or individual salaries		X
➤ number of employees and/or grouped salary	X	

<sup>3</sup> “Evidence of financial capacity” means, without limitation, any document or information relating to the ability of an individual, partnership, association, body corporate, estate, trustee, executor, administrator, or legal representative to make a stated investment. This includes net worth statements, letters of commitment or support of a financial nature, financial statements and loan agreements, as required in [Commission policy regarding documentary evidence to confirm the availability of financing](#).

<sup>4</sup> Where the party does not provide an abridged version of the net worth statement for the public record, it should provide other evidence, such as a letter from a credit granting institution, sufficient to attest to the financial capacity of the individual in question, including the availability of the financing. The attestation should be in the form described in [Commission policy regarding documentary evidence to confirm the availability of financing](#).

<sup>5</sup> “Prospective employees” means the names of all prospective employees who will have an “employer-employee” relationship with the applicant. It excludes the names of directors who will not also be employees.

	Public	Confidential
<b>Other information:</b>		
Technical service information	X	
Proposed service area information	X	
Proposed services to be distributed/carried	X	
Programming costs for individual programs or series		X
Canadian and foreign programming expenditures (aggregates)	X	
Responses to deficiency questions on public file information	X	
Responses to deficiency questions on confidential file information		X

### Pay and specialty services

	Public	Confidential
<b>Annual Returns</b>	X <a href="#">(See note 2)</a>	
<b>Financial Statements<sup>2</sup>:</b>		
➤ Historical financial statements of other than public companies <a href="#">(See note 3)</a>		
• personal holding companies		X
• licensee companies	X <a href="#">(See note 2)</a>	
• other operating companies		X
➤ Historical financial statements of public companies	X	
➤ <b>Projections</b> (financial statements and assumptions): <a href="#">(See note 4)</a> :		
i) for projection years remaining in the current licence term: <a href="#">(See note 3)</a>		
• for operations which are the subject of the application:		
○ renewals	X <a href="#">(See note 2)</a>	
○ amendments	X	
○ asset/share transfers	X <a href="#">(See note 2)</a>	
• for related licensed operations		X

	Public	Confidential
• for combined operations of licensed undertakings		X
ii) for projection years in the prospective licence term: <a href="#">(See note 5)</a>		
• for operations which are the subject of the application:		
○ new licences	X	
○ renewals	X	
○ amendments	X	
○ asset/share transfers	X	
• for related licensed operations		X
• for combined operations of licensed undertakings		X
<b>Evidence of financial capacity<sup>3</sup>:</b>		
Personal net worth statements <sup>4</sup>		X
Annual reports and historical financial statements of public companies	X	
Letters from bankers and other credit granting institutions	X	
Bank loan and other financing agreements	X	
Letters from auditors and/or investment dealers	X	
Letters of commitment to purchase debt and/or equity securities	X	
<b>Employee information:</b>		
➤ names of prospective employees <sup>5</sup> and/or individual salaries		X
➤ number of employees and/or grouped salary	X	
<b>Other information:</b>		
Technical service information	X	
Proposed service area information	X	
Proposed services to be distributed/carried	X	
Programming costs for individual programs or series		X
Canadian and foreign programming expenditures (aggregates)	X	

	Public	Confidential
Responses to deficiency questions on public file information	X	
Responses to deficiency questions on confidential file information		X

### Broadcasting distribution undertakings

	Public	Confidential
<b>Annual Returns</b>		X <sup>(See note 1)</sup>
<b>Financial Statements<sup>2</sup>:</b>		
➤ Historical financial statements of other than public companies <sup>(See note 3)</sup>		
• personal holding companies		X
• licensee companies		X <sup>(See note 1)</sup>
• other operating companies		X
➤ Historical financial statements of public companies	X	
➤ Projected financial statements and assumptions <sup>(See note 4)</sup> :		
i) for projection years remaining in the current licence term: <sup>(See note 3)</sup>		
• for operations which are the subject of the application:		
○ renewals		X <sup>(See note 1)</sup>
○ amendments	X	
○ asset/share transfers		X <sup>(See note 1)</sup>
• for related licensed operations		X
• for combined operations of licensed undertakings		X
ii) for projection years in the prospective licence term: <sup>(See note 5)</sup>		
• for operations which are the subject of the application:		
○ new licences	X	
○ renewals	X <sup>(See note 6)</sup>	
○ amendments	X	

	Public	Confidential
○ asset/share transfers	X	
• for related licensed operations		X
• for combined operations of licensed undertakings		X
<b>Evidence of financial capacity<sup>3</sup>:</b>		
Personal net worth statements <sup>4</sup>		X
Annual reports and historical financial statements of public companies	X	
Letters from bankers and other credit granting institutions	X	
Bank loan and other financing agreements	X	
Letters from auditors and/or investment dealers	X	
Letters of commitment to purchase debt and/or equity securities	X	
<b>Employee information:</b>		
➤ names of prospective employees <sup>5</sup> and/or individual salaries		X
➤ number of employees and/or grouped salary	X	
<b>Other information:</b>		
Technical service information	X	
Proposed service area information	X	
Proposed services to be distributed/carried	X	
Programming costs for individual programs or series		X
Canadian and foreign programming expenditures (aggregates)	X	
Responses to deficiency questions on public file information	X	
Responses to deficiency questions on confidential file information		X

**Notes:**

**Note 1:** The annual returns and financial statements for a broadcasting distribution undertaking whose basic monthly subscriber fee is regulated under the *Broadcasting Distribution Regulations* will be placed on the public file. However, where the basic monthly subscriber fee of a broadcasting distribution undertaking is not regulated, the annual return and financial statements of the undertaking will be treated as confidential commencing with the broadcast year during

which the undertaking's basic monthly subscriber fee is no longer regulated. Where the annual return and financial statements include both rate regulated and non-rate regulated undertakings (e.g. multi-system operators), the financial statements and only that portion of the annual return that contains information related to the non-rate regulated undertaking(s) will be kept confidential.

**Note 2:** For Pay TV services and those specialty services that do not have a Commission approved monthly fee and are not carried as part of the basic service package, only the portion of the annual report and the financial statements, up to the profits before interests and taxes (PBIT) inclusively, will be placed on the public file. Any portion of the annual return or financial statement that would lead to the disclosure of a licensee's aggregated net income or loss, such as information below PBIT or detailed information on shareholders' equity, will be treated on a confidential basis.

**Note 3:** The broadcast year in which an application is filed, and prior years, are considered to be historical years. Subsequent broadcast years are considered projected years.

**Note 4:** Includes all financial statements.

**Note 5:** The first year of the projected licence term begins on the day immediately after the expiry date of the current licence term.

**Note 6:** All information will be placed on the public file with the exception of (i) the breakdown of revenues and operating expenses for radio and, (ii) the breakdown of revenues for television and non-rate regulated BDUs, all of which, when requested, may be treated as confidential.

## Telecommunications proceedings

	Public	Confidential
Quality of service results by competitor for each of the established indicators		X
Lists of connected buildings in high-speed intra-exchange digital network access services forbearance applications		X
The estimated total number of residential and business local access lines, as applicable, that can be served with local exchange services by a competitor, by exchange, where the competitor is capable of serving less than 50% of the total number of residential and business local access lines, as applicable		X
<b>Tariff applications</b>		
Standard tariff applications	X	
<i>Ex parte</i> tariff applications (before interim approval)		X
<b>Regulatory economic study</b> (filed in support of tariff filings)		
Company-specific cost study inputs (e.g. operating expense unit costs/factors, labour unit costs, capital unit costs/factors, capital and expense increase factors,		X

	Public	Confidential
demand)		
Cost study inputs to be placed on the public record as identified by the incumbent telephone companies in paragraphs 3-82, 3-83 of their regulatory economic study manuals	X	

### Broadcasting and telecommunications ownership proceedings

	Public	Confidential
Ownership information, i.e.: identification of shareholders, shares held, classes of shares, shares issued, capitalization, ownership structure, etc.	X	
Any contract or document that may impact on governance or control of an enterprise, for example :  shareholder's agreement, joint venture agreement, voting trust agreement, local management agreement, other management agreements, trademark agreement, programming agreement, financing agreement and/or service agreement <sup>6</sup>	X	
Calculations and assumptions related to business plans, purchase agreements and schedules, and business valuations	X	
Residential address:  <ul style="list-style-type: none"> <li>• name, city and province</li> <li>• other information</li> </ul>	X	X

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<sup>6</sup> For agreements such as trademark agreements and programming agreements, certain information may be designated as confidential under certain circumstances: number of subscribers, profit margin, percentage of revenues, amount payable to a third party, licence fees, duration of the agreement, specific period of programming, number of programming hours targeted.