

Better Regulation: Confidentiality guideline

The confidentiality guideline sets out how energy network businesses must make confidentiality claims over information they submit to us. This guideline balances protecting genuinely confidential information with ensuring that stakeholders can access sufficient information on issues affecting their interests.

What is confidential information?

Energy network businesses may provide us with information voluntarily, or they may be obliged to. When a business provides information voluntarily it can claim that all or part of the information is confidential—meaning it does not want that information publically disclosed. We also have the power to oblige businesses to provide us with information in some circumstances. Information collected in this way is automatically classified as confidential. In both these cases, we have the power to assess the confidential information and can make the information public in some circumstances.

For example, energy network businesses plan the expenditure they will need to supply consumers over the next five year period. Businesses must submit extensive amounts of information on their expenditure plans to support their proposals. Publishing this information promotes a transparent regulatory process.

However, in limited cases the benefit of publishing some of this information may be outweighed by the potential harm. For example, a business may provide an estimate of the cost of providing a service it plans to competitively tender for. If we published their cost expectations it could impact their ability to be competitive in the tender, and ultimately increase the costs to consumers.

We want to balance protecting confidential information with disclosing information to create an open and transparent regulatory decision making process. This balance involves all stakeholders having access to sufficient information to understand and assess the substance of issues affecting their interests.

Who does the confidentiality process apply to?

Electricity network businesses must make confidentiality claims in their regulatory proposals following our confidentiality guideline. We will also use our information gathering powers under the national gas law to require gas network businesses to use the confidentiality template in the guideline during gas determinations.

All energy network businesses must use the template to respond to notices we issue using our information gathering powers under the national electricity and gas laws.

We ask that all other stakeholders use the confidentiality template if they want to submit confidential material to us. There is no binding obligation for other stakeholders to do this. However, we consider the benefit of following our confidentiality process is a robust and transparent regulatory process for all our stakeholders.

What's our confidentiality process?

The confidentiality guideline sets out a two stage process for managing businesses' confidentiality claims. The first stage occurs before we receive any proposal from a business. We'll encourage all stakeholders to discuss what information may be confidential. These discussions should focus on developing a shared practical understanding of the confidential information and the access necessary to strike the balance we seek.

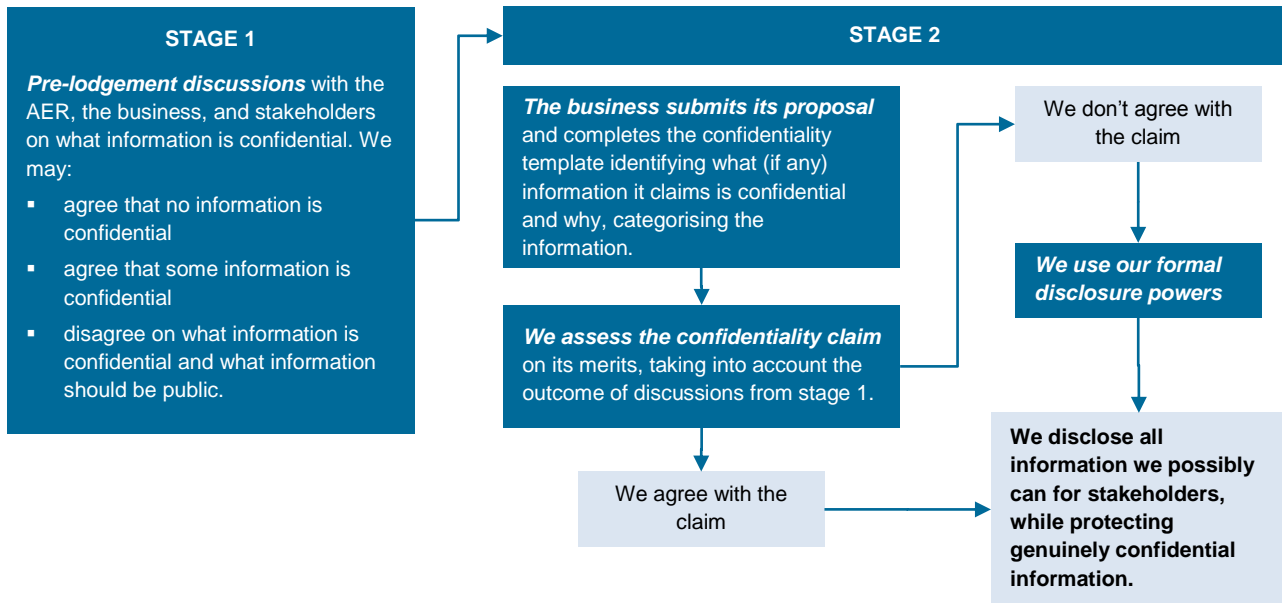
Our aim in the first stage is to reach agreement with the business on what information is confidential. Discussions in the first stage may result in any mix of the following positive outcomes:

- narrower confidentiality claims
- fewer redactions in public versions of documents
- detailed information disclosed but adjusted to protect sensitive elements
- limited release of confidential information, such as through confidentiality undertakings.

The second stage is when a business submits a proposal. The business must complete the confidentiality template in the guideline. The template requires the business to outline what information is confidential, explain why, and categorise the types of information.

We will assess each confidentiality claim on its merits. Classification into a category does not guarantee protection.

Our process for dealing with confidentiality claims



What happens when we agree on confidential information?

In all cases, the business must complete the confidentiality template. If we reached an understanding in the first stage of our process and agree with the claims, we can proceed to disclose all the information we possibly can for stakeholders, while protecting genuinely confidential information.

What happens when we don't agree on confidential information?

We aim to resolve as many confidentiality issues as possible in the first stage of our process. Where agreement is not possible, we may decide to use our formal disclosure powers to publish the information.

For example, we can disclose information a business claims is confidential, if we consider the public benefit outweighs any harm or disclosure will afford natural justice to a person affected by our decision.

What are the categories of confidential information?

The confidentiality guideline sets out the following categories businesses must use to classify confidential information:

- information affecting the security of the network—information that may jeopardise security of the network or its ability to operate effectively
- market sensitive cost inputs—such as supplier prices, internal labour costs, or information affecting the business' ability to obtain competitive prices

- market intelligence—information that may advantage the business' competitors for non-regulated or contestable services
- strategic information—such as the acquisition of land and easements, which might impact the business' ability to negotiate a fair market price for these items
- personal information—information about an individual or customer which raises privacy considerations
- other—information the business claims is confidential but doesn't fit into any other category.

More information

The confidentiality guideline is available on our website at <http://www.aer.gov.au/node/18888>.

This guideline forms part of the Better Regulation program. We initiated this program following changes to the regulatory framework in late 2012. The program includes seven new guidelines that outline our revised approach to determining electricity network revenues and prices, and our establishment of the Consumer Challenge Panel.

For more information on the Better Regulation program please visit our website www.aer.gov.au/better-regulation-reform-program.