

Reference Bulletin on confidential information

**How the Review Board can receive
and protect confidential information
in environmental impact assessment
proceedings**

October 2025



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About the Review Board

The Mackenzie Valley Environmental Impact Review Board (the Review Board) is an administrative tribunal established through the *Mackenzie Valley Resource Management Act* (the Act) that resulted from the *Gwich'in Comprehensive Land Claim Agreement*, the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, and the *Tłıchǫ Land Claims and Self-Government Agreement*.

The Review Board conducts environmental assessments and environmental impact reviews in the Mackenzie Valley under subsection 114(a) of the Act. The Review Board's mandate is broad and comes from Part 5 of the Act. As per section 115 of the Act, the Review Board must consider in its proceedings:

- *the protection of the environment from significant adverse impacts,*
- *the social, cultural and economic well-being of residents and communities in the Mackenzie Valley, and,*
- *the importance of conservation to the well-being and way of life of Indigenous peoples to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.*





1. Introduction

The Mackenzie Valley Environmental Impact Review Board (Review Board) was established by the *Mackenzie Valley Resource Management Act* (the MVRMA) and is responsible for the environmental impact assessment processes¹ in the Mackenzie Valley of the Northwest Territories.

The Review Board's mandate is set out in Part 5 of the MVRMA. In fulfilling this mandate, the Review Board runs environmental assessment (EA) proceedings that seek out and consider evidence from parties including developers, Indigenous, federal and territorial governments, communities, or the public. At times, EA participants may wish to submit confidential information to the Review Board for consideration in its decisions.

This reference bulletin describes:

- legislation and rules relevant to accepting and protecting confidential information in Review Board proceedings,
- the processes and rules that the Review Board has in place to receive and protect confidential information,
- special considerations for how the Review Board can receive and protect confidential Traditional Knowledge that parties wish to provide, and
- options available to parties for submitting and protecting confidential information in Review Board proceedings.

2. Legislation and rules relevant to accepting and protecting confidential information

The Review Board is a resource co-management board established by and subject to the requirements of the *Mackenzie Valley Resource Management Act* (MVRMA). It runs public, transparent and fair processes to make its decisions and has designed its Rules of Procedure accordingly.² Section 142.1(1) of the MVRMA requires the Review Board to maintain a public register that contains all documents produced, collected or received by the Review Board during a proceeding. The Review Board also maintains an online version of the public register called a public registry.

The **public registry** is the online repository of all documents relevant to a proceeding. The **public record** is the subset of items on a public registry that is relevant to a Review Board decision.

The Rules of Procedure state that all information submitted during a Review Board proceeding is public and will be handled according to the MVRMA and federal privacy laws.³ The Review Board encourages all parties to submit information to its proceedings publicly whenever possible and appropriate. However, if a party so requests and the Review Board approves, **the Review Board can accept and protect confidential information in its proceedings.**

¹ Environmental impact assessment under the Act includes preliminary screening, environmental assessment, and environmental impact reviews.

² Available online at: <https://new.reviewboard.ca/sites/default/files/2025-02/rules-of-procedure-2023.pdf>

³ See rule 62.



The Review Board is also subject to the *Access to Information Act* (R.S.C 1985, c. A-1) as a government institution to which the Act applies. This means that all information relevant to a Review Board proceeding, with some exceptions, is subject to access to information requests.⁴ Some exemptions include:

- information received in confidence from Indigenous governments identified in the *Access to Information Act*,
- personal information,
- third party trade secrets, or
- information that may be injurious to the conduct of international affairs, the defence of Canada or Canada's economic interests.

3. Processes for accepting and protecting confidential information

Figure 1 describes the process for submitting and keeping confidential information secure in Review Board proceedings. If the Review Board decides to NOT accept confidential information, then the process stops after step 2 below.

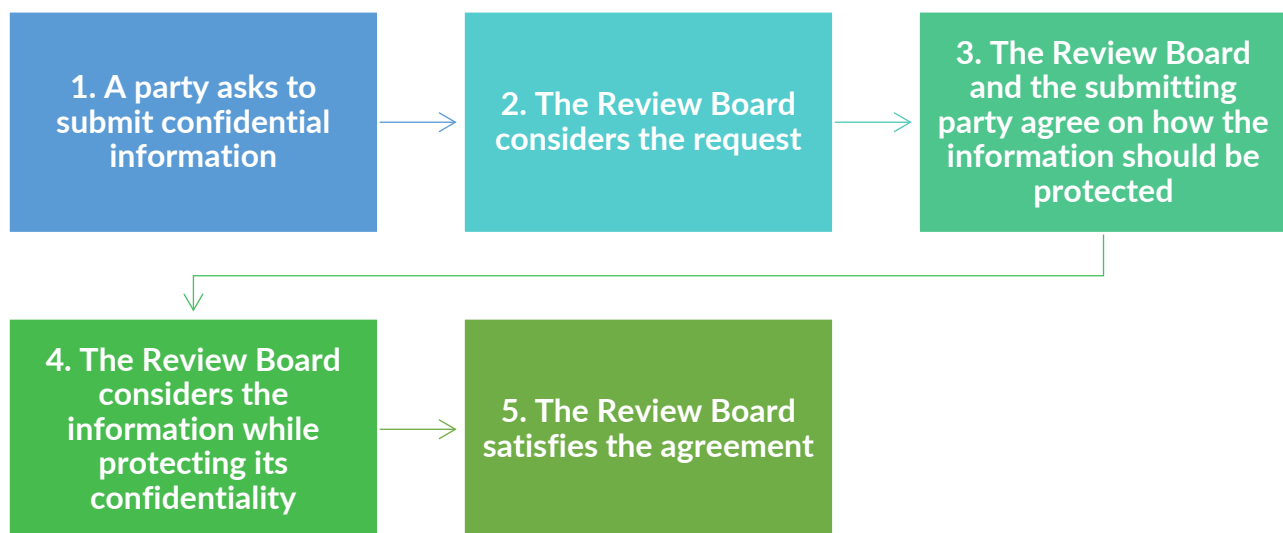


Figure 1- Process for submitting and keeping confidential information secure in Review Board proceedings

⁴ See ss 13-23.1 of the *Access to Information Act*.



3.1 A party asks to submit confidential information

Parties who wish to ask the Review Board to accept confidential information must submit a Request for Ruling to the Review Board⁵ describing:

- the type of information that will be submitted
- the relevance of the information to the proceeding
- rationale for the need for confidentiality
- proposed treatment of the information
- considerations to protect rights to ownership, control, access and possession of confidential Indigenous Traditional Knowledge

Our Request for Ruling form can be found on our website [here](#).

To help ensure that parties' confidential data remains safe and protected, Parties should not submit confidential information to Review Board staff until the Review Board has considered the request for confidentiality and has decided to accept the submission.

3.2 The Review Board considers the request

The Review Board will inform all parties to a proceeding about the Request for Ruling and may ask for their input on the request before making its decision. The Review Board may decide to accept or not accept the submission of confidential information. In either case, it will put a notice of its decision with reasons on the public registry.

If the Review Board does not accept a request to submit confidential information, the Review Board will set out its decision with reasons on the public registry. The Review Board may decide not to accept information under confidential cover:

- if it is already publicly available;
- if it is not relevant to the environmental assessment; or
- for any other reason as laid out in its reasons for decision on the matter.

⁵ As required by rule 63.



3.3 The Review Board and the submitting party agree on how the information should be protected

If the Review Board approves the request to submit confidential information, it will put a notice on the public registry that outlines how and under what conditions the confidential information should be stored, managed and shared. These terms will be negotiated between the Review Board and the submitting party and will be included in a non-disclosure and confidentiality agreement as required.^{6,7}

The non-disclosure and confidentiality agreement is not public. However, the Review Board will issue a notice to parties describing how they can view the information that was submitted under confidential cover, and under what circumstances, based on the specifics described in the non-disclosure and confidentiality agreement.

The need to protect confidential information in a proceeding must be balanced by the requirements for procedural fairness. This means that developers have a right to see and duly respond to this confidential information.

The Review Board can safely store and manage confidential information in both digital and paper formats. Please see Appendix A for a sample non-disclosure and confidentiality agreement that may be a useful starting point for parties to consider. Key considerations that can be set out in a non-disclosure agreement include:

- Who can access the information?
- How should the information be stored, accessed and used?
- How long will the Review Board hold the information, and what should happen once the Board has considered the information?

3.4 The Review Board considers the information while protecting its confidentiality

Depending on the terms of the agreement between the party and the Review Board, the Review Board may post a non-confidential summary of the information or a non-confidential, redacted version of the documents to the public registry with consent from the submitting party. Parties may request to see the confidential information (described in section 3.3 above). The Review Board will post a list of parties who viewed the confidential information on the public record.

Any party that submits confidential information should also consider how they can use that information to support their non-confidential submissions to the Board (for example, their interventions or hearing presentations). In some cases, the Review Board accepts confidential information in a proceeding and uses it to inform its decision or reasons for decision. The Review Board has many options to protect the confidentiality of the information while being transparent about its reasons. These options can include:

⁶ As per rule 64.

⁷ If the Review Board follows the terms of the confidentiality agreement, it is not liable for third party breaches of confidentiality.



- partial redactions
- uses of codes or aliases to identify important areas
- providing drafts of documents to the party who submitted the confidential information so that they can review and ensure that confidentiality has been protected.

3.5 The Review Board satisfies the requirements of the agreement

Based on the conditions set out in the confidentiality and non-disclosure agreement and legislated requirements or records retention, the Review Board will return or dispose of the confidential information after the proceeding is concluded, and the Board has reached their final decision on the assessment.^{8,9}

4. Special considerations related to confidential Indigenous Traditional Knowledge

The Review Board respects and values Indigenous Traditional Knowledge and recognizes the sacred importance of this knowledge. Indigenous people and Governments are the stewards of their Traditional Knowledge and have ownership and control over access to and use of this Knowledge.

The Review Board is committed to honouring Indigenous Traditional Knowledge and information sharing protocols and practices whenever they are available. The Review Board's acceptance and use of Indigenous Traditional Knowledge, including confidential Indigenous Traditional Knowledge, will be sensitive to the nature and source of the information.

We will continue working with Indigenous Governments and communities to ensure that the parties who wish to submit confidential Indigenous Traditional Knowledge can do so in safe and respectful ways, including in oral settings. The Review Board will collaborate with Indigenous Governments and communities to identify special considerations for submitting and protecting Indigenous Traditional Knowledge as we update our Traditional Knowledge Guidelines.¹⁰

⁸ As per sections 130(1) and 135(1) of the *Mackenzie Valley Resource Management Act* for environmental assessments and environmental impact reviews, respectively.

⁹ Summary notes or other materials that parties who view the information take, if permitted by the non-disclosure agreement, are not considered confidential and are therefore not required to be returned or destroyed.

¹⁰ Our Traditional Knowledge Guidelines are available on our website [here](#). The Review Board is starting a process to update these Guidelines and will work with Indigenous Governments and Communities on this important work.



5. Next steps

The Review Board's proceedings are designed to fulfill the intent, principles and requirements of the MVRMA. They are also designed to be fair, focused, effective and to meet the needs of parties, members of the public and the Review Board. Each request for ruling in a proceeding will be managed on a case-by-case basis, including requests for rulings about submitting confidential information.

This reference bulletin is intended to provide helpful information to parties and may be updated from time to time, as necessary. More detailed, updated guidance information will be provided when we update our Traditional Knowledge Guidelines and Environmental Impact Assessment Guidelines.





Appendix 1- Example of a non-disclosure and confidentiality agreement between a submitting party and the Review Board¹¹

EXAMPLE NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the “Agreement”) is entered into and effective as of _____, 2025 (the “Effective Date”).

Between:

Party X

(the “the Party”)

And:

THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

(the “Board”).

(together the “Parties”)

- A. The Board is reviewing the proposed Project Y (the “Project”) in accordance with Part 5 of Mackenzie Valley Resource Management Act (S.C. 1998, c. 25) in proceeding EA1234-56 (“Board’s Review”);
- B. The Party wishes to enter into this Non-Disclosure and Confidentiality Agreement (“Agreement”) to enable Confidential Information to be shared and appropriately used to inform the Board’s review.

NOW THEREFORE, in consideration of such information being disclosed, the parties agree as follows:

- 1) “Confidential Information” means all information in oral, written, digital, or other form, which is either non-public, proprietary, or confidential in nature that is furnished by the Party, or a third party on behalf of the Party, to the Board in relation to the Project.
- 2) This Agreement shall not apply to information which:
 - a) is or becomes part of the public domain, without breach of this Agreement; or

¹¹ Please note that this is a sample agreement only. Additional or different provisions, including those specific to confidential Traditional Knowledge, may be applied to a non-disclosure and confidentiality agreement, depending on the type and nature of information to be submitted and the requirements of the parties.



- b) was received in good faith from a source other than the Party, who transmitted it without breaching an obligation of non-disclosure or confidentiality to the Party.

3) The Board's Obligations

The Board agrees that without the prior written informed consent of the Party, the Board will not disclose the Confidential Information of the Party to any person other than its employees, agents, representatives, consultants, and advisors who need to know the Confidential Information for the Board's Review and who, prior to being given access to the Confidential Information, have been informed of the confidential nature of the Confidential Information and have been bound to the same or similar non-disclosure and confidentiality obligations as are set out in this Agreement. The Board shall be responsible for any breach of this Agreement by its employees, agents, representatives, consultants, and advisors. The Confidential Information of the Party shall be used by the Board only in connection with the Project unless the prior written informed consent of the Party is given for the Confidential Information to be used for another specified purpose.

4) Specific Use of Confidential Information.

The Board will consider (use) Confidential Information to guide and inform the Board's Review and related materials. The Board and its advisors and consultants, who shall be bound to the confidentiality obligations herein by Board, shall be permitted to access and use the Confidential Information solely as required to assist in the fulfilment of its obligations, undertakings, and work relating to the Board's Review.

5) Safeguards

The Board agrees that it shall protect the Confidential Information of the Party from unauthorized disclosure with not less than the same degree of care which it would exercise to prevent the unauthorized use, dissemination, or publication of its own similar information and, in any event, no less than reasonable care. Specifically, the Board has outlined in a Notice of Proceeding dated [insert date] its approach to Confidential Information:

- a) The Board will keep one secure, hard copy of the confidential information at the Board's office;
- b) Parties to the proceeding that wish to access the document for the purpose of the proceeding ("Requesting Party") may contact Board staff to request to review the Confidential Information
- c) A Requesting Party will describe who will review the Confidential Information, and why they want to view the information.
- d) Board staff will notify the Party of the request and as long as the request is reasonable, Board staff will schedule a time for the Requesting Party to view the Confidential Information.
- e) The Requesting Party will sign an agreement to be bound to the same or similar non-disclosure and confidentiality obligations as are set out in this Agreement.
- f) Board staff will remain in the room while the Confidential Information is being viewed by the Requesting Party.



g) The Requesting Party will not take photos or make copies of the Confidential Information.

Provided the Board has followed processes identified above, it shall not be liable for third party breaches of confidentiality obligations arising from sharing the Confidential Information with Requesting Parties.

6) Any unauthorized or accidental disclosure of Confidential Information by the Board will not constitute a waiver of the Party's claim of confidentiality, exclusive ownership, or any other protection that applies to the Confidential Information.

7) Return or Destruction of Confidential Information

Subject to information and document retention laws and policies applicable to the Board, upon request of the Party, the Board will within a reasonable period of time following the Final Decision by the Minister return or destroy all Confidential Information provided by the Party for the purpose of this Agreement. At the Party's request, the Board shall certify in writing that all such Confidential Information was returned or destroyed.

8) Compelled Disclosure

The Party advises that the Confidential Information is technical information that is consistently treated in a confidential manner by the Party as contemplated by s. 20 (1) (b) of the Access to Information Act, RSC 1995, c A-1. If the Board is required by law to disclose Confidential Information of the Party, the Board agrees to give the Party prompt notice of this requirement so that the Party may seek a protective order or other appropriate remedy to protect its Confidential Information. In the event the Board is ultimately required by law to disclose the Confidential Information, the Board shall exercise reasonable efforts to ensure that confidential treatment will be accorded to the Confidential Information so disclosed.

9) Term

This Agreement takes effect on the Effective Date and remains in effect until the Board issues its final decision in the Proceeding. The Board's obligations of non-disclosure of Confidential Information in articles 3 and 4 of this Agreement, and regarding compelled disclosure of Confidential Information in article 8, shall survive expiration and remain in effect. The term may be extended by mutual agreement of the parties.

10) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.

11) Severability

If any provision of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, such determination will not impair or affect the validity, legality or enforceability of





the remaining provisions of this Agreement, and each provision, or portion thereof, is separate, severable, and distinct.

12) General provisions

- a) Nothing in this Agreement limits the lawful jurisdiction, authority, or obligations of either Party.
- b) This Agreement or any actions taken pursuant to it, will not be construed as creating, affirming, recognizing or denying any rights or as transferring any competence of either Party.
- c) Nothing in this Agreement will be construed so as to create, abrogate, or diminish any rights of the Party.
- d) Time is of the essence in this Agreement.
- e) This Agreement may be amended with written consent of the Parties.
- f) The Preamble is intended to assist in the construction and interpretation of this Agreement.

13) Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, forms, conditions, undertakings, or collateral agreements, express, implied, or statutory between the Parties other than as expressly set forth in this Agreement.

14) Written Communication

A written communication will be delivered, emailed or mailed to the address, or transmitted to the facsimile number of the intended recipient as set out below, unless another address for delivery has been provided by a Party:

PARTY X

Name

Contact Address

Tel:

Fax:

Email:

MACKENZIE VALLEY ENVIRONMENTAL
IMPACT REVIEW BOARD

Chairperson Name

Address:

Tel

Email:

Signature:

Date:

Signature

Date:

