



INDEPENDENT CONSUMER AND  
COMPETITION COMMISSION

**A Public Consultation Document on  
“Confidentiality Claims Guideline”**

*Issued by ICCC on 24<sup>th</sup> February, 2017*

A Guideline for corporations and individuals intending to apply for confidentiality under Section 131 of the Independent Consumer and Competition Commission Act 2002.

## **Executive Summary**

The Independent Consumer and Competition Commission (“ICCC”) developed this consultation paper on the “Confidentiality Claims Guideline” (“Guideline”) setting out processes and procedures regarding the handling of confidential information.

The Guideline was prepared in accordance to section 7(3) of the ICCC Act which empowers the ICCC to publish such documents relating to the performance of its functions.

The consultation document addresses the process an individual or corporation must follow when submitting an Application for Confidentiality under *Section 131* of the ICCC Act. The Guideline also sets out how the ICCC deals with an application, when one is made.

The ICCC seeks comments and submissions on the Guideline as part of this Public Consultation Document. Persons wishing to respond are invited to submit written comments or submissions to the address below by **Monday 20<sup>th</sup> March, 2017**.

## **Public Consultation Process**

The objective of this Public Consultation document is to provide stakeholders with the opportunity to make comments and submissions to the ICCC on the contents and implications of the Guideline.

The ICCC invites members of the public, private sector stakeholders, public sector stakeholders and commercial entities to participate in this Public Consultation Process.

All comments and submissions should be addressed to **Mr. Paulus Ain, Commissioner and Chief Executive Officer** of the ICCC using the address provided below.

All queries relating to this matter should be directed to Mr. Steven Sugl, Executive Manager, Competitive Markets & Fair Trade Division or Mr. Emmanuel Auru, Manager-Markets on telephone 325-2144 or e-mail to: [ssugl@iccc.gov.pg](mailto:ssugl@iccc.gov.pg) or [eauru@iccc.gov.pg](mailto:eauru@iccc.gov.pg), respectively.

Please note that all submissions relating to this consultation will be treated as public information and will be published in the ICCC Public Register, except where information is designated “confidential” by the person submitting. Where information is designated confidential, the person submitting must provide reason(s) as to why that particular information should not be disclosed to the public. The ICCC will assess it and decide on the confidentiality claim(s), but please note that not all such claims are granted.

Independent Consumer and Competition Commission  
1<sup>st</sup> Floor Garden City Complex  
Angau Drive  
PO Box 6394  
**BOROKO**  
National Capital District  
**Telephone : (675) 325 2144**  
**Facsimile : (675) 325 3980**

The Public Consultation on the Guideline is shown below in **Annexure A**.

---

# **ANNEXURE A - Confidentiality Claims Guideline**

---



INDEPENDENT CONSUMER AND  
COMPETITION COMMISSION

April 3

# Confidentiality Claims Guideline

# 2017

---

A Guideline for corporations and individuals intending to  
apply for confidentiality under Section 131 of the  
Independent Consumer and Competition Commission Act  
2002.

## Table of Contents

<b>Overview</b> .....	6
<b>Purpose of Guidelines</b> .....	6
<b>Scope of Guidelines</b> .....	7
<b>ICCC Legal Position</b> .....	7
<b>Confidential Information should be identified</b> .....	8
<b>Confidential information should be justified</b> .....	9
<b>How the ICCC will manage confidential information</b> .....	9
<i>ATTACHMENT A – Form 4</i> .....	11

## Overview

1. This Confidentiality Claims Guideline (“Guideline”) is a simple Guideline that sets out the process an individual or corporation (“applicant”) must follow when submitting an Application for Confidentiality under *Section 131* of the *Independent Consumer and Competition Commission Act of 2002* (“ICCC Act”). The Guideline also sets out how the Independent Consumer and Competition Commission (“ICCC”) deals with an application, when one is made.
2. Section 131 of the ICCC Act provides for Access to Information and reads as follows:
  - (1) Subject to Subsection (2), the Commission shall make available for public inspection information submitted to it in the course of the performance of its functions except information that is designated “confidential” by the person who submits it.*
  - (2) A member of or person employed by the Commission, shall not knowingly or recklessly disclose or knowingly or recklessly allow to be disclosed information designated “confidential” to any person in any manner that is calculated or likely to make it available for the use of any person who may benefit from such information or use such information to the detriment of the person to whose business or affairs the information relates, and the provisions of this subsection shall apply whether or not the person who discloses such information has ceased to be a member or employee of the Commission.*
  - (3) Where information designated “confidential” is submitted to the Commission, the Commission may disclose or require its disclosure if it determines, after considering any representation from interested persons, that the disclosure is in the public interest.*
3. The Guideline explains the ICCC’s legal obligation in handling confidential information, the process for submitting confidential information and how the ICCC will deal with any confidential information submitted in accordance with Section 131.
4. The Guideline also explains the role of the applicant and what requirements there are for the applicant to comply with when applying for confidentiality.

## Purpose of the Guideline

5. As a regulator, the ICCC is always transparent in its dealings with businesses and consumers. Its major determinations in relation to authorisation and

clearance applications, reports on specific industry reviews, as and when one is conducted, are done through public consultative process; and published for public inspection and use. As such, apart from confidential information, all information and/or documents submitted for such purposes are used and disclosed publicly.

6. While the ICCC tries as much as possible to be transparent in its dealings with businesses and consumers, it gives paramount considerations to any information or documents submitted to the ICCC that are claimed to be confidential; and if disclosed publicly or to third party/ies would be commercially detrimental to the person who submits it.
7. This Guideline is produced to safeguard this vital aspect of the work of the ICCC and set out steps to assist businesses and persons requesting confidentiality should follow to apply for such requests.
8. In recent years the ICCC has become aware of the need for a confidentiality claims Guideline that sets out the manner in which requests for confidentiality are dealt with by the ICCC, what applicants should expect from the ICCC in relation to handling confidential information and other related issues.
9. It was agreed that the Guideline be created to clearly set out those requirements and legal obligations necessary to complete Form 4 Application.
10. The Guideline does not have the force of law. Rather it is the courts that have ultimate jurisdiction to determine any issues that may arise from ICCC's conduct in dealing with confidential information submitted pursuant to Section 131. Instead the Guideline is merely a tool to guide applicants when submitting confidential information to the ICCC.

### **Scope of Guideline**

11. The Guideline covers:
  - (i) The ICCC's legal position under the ICCC Act;
  - (ii) How confidential information should be identified;
  - (iii) How confidential information should be justified; and
  - (iv) How the ICCC will manage confidential information.

### **ICCC Legal Position**

12. The ICCC is committed to treating confidential information responsibly and in accordance with the ICCC Act. An intending applicant must read Section 131 of the ICCC Act carefully before submitting a request for confidentiality.
13. The ICCC will make all information submitted to it, in the course of performing its functions, available for public inspection, unless the person who submitted the information requested that this information be treated as confidential.
14. ICCC staff are not allowed either knowingly or recklessly to disclose any information designated as confidential in a way that will allow this information to be used by other persons at the detriment of the person whose business or affairs the information relates to. Even if this person ceases to be an employee of the ICCC, he or she is still liable for disclosing information and will be dealt with according to law.
15. Where information is designated confidential and submitted to the ICCC, the ICCC may disclose this information, if after careful consideration, it is of the view that disclosure is in the best interests of the public.
16. It is important to note that what the applicant claims as confidential is not automatically granted by the ICCC. The ICCC will assess and make a decision on a case by case basis whether or not to grant such confidentiality. Hence it takes some time to get the decision out to the applicant and any representation can be made thereafter.
17. The ICCC Act does not define what “public interest” is or what constitutes public interest, however for the purposes of this guideline, generally a public interest is anything that will benefit the whole community or population in PNG. It is not restricted to a particular set of principles but will depend on the nature of the facts and circumstances relating to the confidential information that is submitted and whether or not it will benefit the public for that information to be divulged.
18. It is also important to note that the term ‘public’ is not only restricted to the general PNG public, but also extends to consumers, producers and suppliers, including the applicant’s staff and rival competitors.

#### **Confidential Information should be identified**

19. Since the ICCC reserves discretion to disclose information submitted to it, it is very important when submitting information that is confidential to the ICCC, that this information must be clearly identified in Form 4.

20. There are two ways that an applicant can do this:
  - (i) An applicant can submit a 'confidential version' with the confidential information being marked clearly as "CIC" (for 'commercially in confidence'); and /or
  - (ii) Provide a redacted version together with the confidential version clearly marked on the top as "redacted version".
21. This will minimize the risk of accidental disclosure by the ICCC and enable the ICCC to make available public version(s) of submissions for public disclosure purposes.
22. The ICCC does not give 'blanket confidentiality'; hence applicants should not seek 'blanket confidentiality'. Thus the applicant should clearly identify to the ICCC (by filling in Form 4) the information or parts of a document submitted to the ICCC which is considered to be confidential.
23. The onus is on the person who is submitting the information to clearly mark the confidential information as such.

### **Confidential information should be justified**

24. An applicant should justify why the information they are submitting should be treated confidentially. To assist the applicant better, the ICCC recommends that applicant read carefully this Guideline and correctly fill out Form 4. See Attachment A. Form 4 will enable the applicant to detail why disclosure of certain information could cause commercial harm or is generally detrimental to them.
25. Applicants are free to approach the ICCC at any time to discuss the specifics of their case and to seek the ICCC's view on availability of confidentiality. At the request of the corporation or individual concerned, the discussions may be treated with anonymity.
26. Providing supporting information to justify confidentiality claims will provide greater transparency and act as an incentive for stakeholders in convincing the ICCC of the authenticity of the confidentiality claim.

### **How the ICCC will manage confidential information**

27. While a time frame is not required under the ICCC Act, the ICCC tries as much as possible to provide its response and decisions on confidentiality requests as soon as practical. The ICCC normally less than 10 working days to review the

applications for confidentiality and revert with a decision on whether or not to grant confidentiality.

28. As mentioned elsewhere in this Guideline, the ICCC may reject any claim for confidentiality if it considers that disclosure is in the best interests of the public.
29. If the ICCC decides to disclose any information claimed to be confidential, the applicant will be notified in writing and provided an opportunity to withdraw that information.
30. The applicant is not allowed to disclose to anyone, any discussions or dealings with the ICCC. All disclosure must be authorised by the ICCC.
31. Once the ICCC has reached a decision on granting confidentiality to an applicant, it will notify the applicant in writing and proceed to handle all confidential information with care and consideration for the interests of those concerned.
32. Where a person requests that the information which the ICCC has granted confidentiality be released to them or publicly, the ICCC will only do so with the consent of the applicant whom confidentiality was granted to. The person making such a request should also provide valid reason(s) why the ICCC should reconsider its decision.
33. Persons submitting confidential information may not necessarily have to complete Form 4. If the ICCC considers that the information claimed to be confidential should be disclosed to a third party, the ICCC will contact the submitter and advise him/her to complete Form 4 and apply for confidentiality.
34. The ICCC may publish a public version of its confidentiality decisions; but not the information which confidentiality have been granted.

## ATTACHMENT A

INDEPENDENT STATE OF PAPUA NEW GUINEA  
Independent Consumer and Competition Commission

Form 4

### APPLICATION FOR CONFIDENTIALITY

An Application for Confidentiality is made pursuant to Section 131 of the *Independent Consumer and Competition Commission Act of 2002*.

#### 1. Applicant/s

Name of Applicant:

---

Address in PNG for service of documents:

(a) Physical address:

---

(b) Postal address:

---

(c) Phone and email address:

---

#### 2. Purpose for submitting the information

The information will be used for:

---

---

#### 3. Confidentiality claim/s

Create on a separate sheet of paper, a table as shown below. Fill out the table and provide the facts and contentions in support of the confidentiality claim. Please note that the ICCC does not give 'blanket confidentiality'.

No.	Name of Document	Page and line number	Confidential Information	Reasons of confidentiality
1.				
2.				
3.				
4.				

5.				
6.				

**4. Statement of confidentiality**

The undersigned declares that, to the best of his/her knowledge and belief, the information identified in the list under Part 3 of this application is confidential and thus requests that it be treated as such.

The undersigned are aware of Section 131 of the ICCA Act, in that the ICCA reserves the right to either grant or decline confidentiality if it deems that disclosure is in the public interest.

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Office held

\_\_\_\_\_  
(Print) Name of authorized person

This \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_