

**Case Notes**

Certificate hearings open to public; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity. 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

**14:1-10.3 Extension of time limits**

In instances where the Board’s decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time limit, petition to the Board shall be made in writing at least five days before the expiration of the time limit.

**14:1-10.4 Answers to communications**

Unless otherwise specified, any letter or telegram from the Board directing investigation of any matter under its jurisdiction must be complied with by the utility and a report received by the Board within 15 days from the date of the letter or telegram. If circumstances prevent compliance with this rule, the utility must advise the Board, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

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SUBCHAPTER 11. (RESERVED)

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SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

**14:1-12.1 Scope**

(a) This subchapter sets forth the procedures for making information received by the Board of Public Utilities in administering its duties available to the public and maintaining confidentiality of certain parts of the information.

(b) Any person or entity required to submit or who does submit to the Board any information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which in the person’s or entity’s opinion constitutes trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(c) With regard to any determination related to a request for the confidential treatment of information, the provisions of N.J.A.C. 17:44-5.1, 5.2 and 5.4 shall be taken into consideration.

(d) This subchapter is only one of several legal mandates which govern the public release of information submitted to

the Board. Because the Board is an agency in but not of the Department of Treasury, pursuant to N.J.S.A. 52:18A-2.1, the Board will apply the Department of Treasury’s OPRA rules in addition to the provisions of this subchapter. In addition, some provisions of OPRA and other applicable statutes, which apply to the confidentiality of submitted information, may apply but are not repeated in these rules. Executive Orders No. 21 and 26 (2002) also apply to the Board’s treatment of submitted information.

(e) Nothing in this subchapter shall limit the Board’s authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter the Board may deem appropriate.

(f) The Board shall use the procedures in this subchapter to implement its authority under N.J.S.A. 52:27F-18d to make determinations regarding the confidentiality of energy trade secrets and other energy information submitted to the Board pursuant to N.J.S.A. 52:27F-18d.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (b), inserted “, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18,”; and added (f).

**14:1-12.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Claimant” means any person who submits a confidentiality claim under this subchapter.

“Confidential copy” means a record (or copy thereof) submitted to or obtained by the Board or the custodian, containing information which the claimant asserts is confidential information.

“Confidential information” means information which the custodian and/or the Board determines, in accordance with the procedures of this subchapter, to have satisfied the substantive criteria in this subchapter and/or in applicable law described at N.J.A.C. 14:1-12.1(d). Information may be claimed confidential by the person who submitted it, or the Board may on its own initiative determine information to be confidential.

“Confidentiality claim” or “claim” means, with respect to information that a person is required either to submit to the Board or to allow the Board to obtain, an assertion in accordance with this subchapter that the information is entitled to be exempt from public disclosure under applicable law.

“Confidentiality determination” means a determination by the custodian that the asserted confidential information is or is not confidential information.

“Contract” means an agreement between the Board and a contractor, for which the Board has determined it is necessary

for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

“Contractor” means a person other than an employee of the Board, who has entered into a contract, as defined herein, with the Board to perform services or to provide goods for the Board.

“Custodian” means the officer officially designated by the Board to oversee the public’s access to government records pursuant to N.J.S.A. 47:1A-1 et seq.

“Designee” means the person designated by a claimant in accordance with N.J.A.C. 14:1-12.4 to receive notices and other communications relating to confidentiality claims from the custodian under these rules.

“Energy information” means any statistic, datum, fact, or item of knowledge and all combinations thereof relating to energy, which is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

“Energy trade secret” means a trade secret, as defined in this section, that pertains to the energy industry and is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

“Final public copy” means a copy of a record submitted to or obtained by the Board, identical to the confidential copy except that any confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the “final public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Preliminary public copy” means a copy of a record held by the Board, identical to the confidential copy except that any asserted confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the “preliminary public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Requester” means a person who has made a request to the Board to inspect or copy records which the Board possesses or controls.

“Substantiation” means information which a claimant submits to the custodian in support of a confidentiality claim made pursuant to N.J.A.C. 14:1-12.8.

“Trade secret” means the whole or any portion or phase of any scientific, technical or otherwise proprietary information, design, process, procedure, formula or improvement which is used in one’s business and is secret and of value; and which provides him or her the opportunity to obtain an advantage over competitors who do not know or use it. A trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons

other than those selected by the owner to have access thereto for limited purposes.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Added definitions “Energy information”, “Energy trade secret” and “Trade secret”.

### 14:1-12.3 Procedure for making a confidentiality claim

(a) Any person or entity required to submit or who does submit to the Board information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the custodian a confidential copy and a preliminary public copy, as those terms are defined at N.J.A.C. 14:1-12.2, of the entire record containing asserted confidential information. The preliminary public copy shall carry a notation, in a form to be developed by the custodian, stating that confidential information has been blacked out or deleted. The custodian may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy “CONFIDENTIAL COPY.” At the top of each page of the confidential copy which contains information that the claimant asserts is confidential, the claimant shall place a boldface heading reading “CONFIDENTIAL.” The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word “CONFIDENTIAL” in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the custodian. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the custodian by certified mail, return receipt requested, or by other means providing receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices and other communications. The designation shall include the information required pursuant to N.J.A.C. 14:1-12.4.

(g) The claimant shall include in the package substantiation of the confidentiality claim as described in N.J.A.C. 14:1-12.8.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (b), substituted “the entire” for “any”.

**14:1-12.4 Designation by claimant of a designee for notices and inquiries**

(a) A claimant shall designate a person as the proper addressee of notices and other communications from the custodian under this subchapter. To designate such a person, the claimant shall submit the following information to the custodian in writing:

1. The name and address of the claimant;
2. The name, address, e-mail address, telephone number and facsimile number of the designee, and any other contact information that will assist the Board in rapidly contacting the person regarding the confidentiality determination; and
3. A request that all custodian communications (oral and written), including, without limitation, the notices listed in N.J.A.C. 14:1-12.7 and 12.9, be directed to the designee.

**14:1-12.5 Correspondence, inquiries and notices**

(a) The custodian shall direct all correspondence, inquiries and notices to the designee, including, without limitation, the following:

1. Notices of requests submitted to the Board for the confidential information that was submitted by the claimant; and
2. Notices of the Board's denial of the confidentiality claims.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this subchapter to the custodian at:

Records Custodian  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, New Jersey 08625-0350

Administrative change.  
See: 43 N.J.R. 1896(a).

**14:1-12.6 Time for making confidentiality determinations**

(a) The custodian shall make a confidentiality determination within seven business days after the custodian's receipt of a request to inspect or copy records containing asserted confidential information, unless:

1. A reasonable extension is necessary because the records are in storage or in use. In such a case, the records custodian shall so advise the requestor within seven business days after the custodian received the request, and shall make other arrangements to promptly make available a copy of the records;
2. The requester consents to a reasonable extension of time; or

3. The request for access to records would substantially disrupt the Board's operations. In such a case, the custodian may deny access to the record without making the confidentiality determination, provided that the custodian first attempts to reach a reasonable solution with the requester, which accommodates the interests of the requester and the Board.

(b) The custodian shall not take any action which is inconsistent with the requirements for the treatment of information that has been claimed confidential, set forth in N.J.A.C. 14:1-12.10 until a determination has been made as to whether the information is confidential or not.

(c) Requests received after 4:00 P.M. will be considered as received on the next business day.

(d) Except as otherwise provided in (a) above, the custodian may, in his or her discretion, make a confidentiality determination at any time.

**14:1-12.7 Notice of pending confidentiality determination**

(a) When the custodian is required, pursuant to N.J.A.C. 14:1-12.6(a), to make a confidentiality determination, the custodian shall send a notice to the designee for each claimant who is known to have asserted a claim applicable to such information. The notice shall include the following:

1. A copy of the request form, with any information that is exempt from public disclosure under N.J.S.A. 47:1A-1 et seq. removed; and
2. The earliest date that the information may be made available to the public under this chapter, if the asserted confidential information is determined not to be confidential.

(b) If the identity of the claimant is immediately discernable from the information supplied on the request form, the custodian shall notify the claimant's designee by fax, telephone or e-mail as soon as feasible, but no later than two business days after receiving the request. If the identity of the claimant is not immediately discernible, the custodian shall notify the claimant's designee of the request as soon as it is reasonably possible to identify the claimant.

**14:1-12.8 Substantiation of confidentiality**

(a) To substantiate a confidentiality claim, a claimant shall submit the following information, as applicable, pursuant to the procedure set forth in N.J.A.C. 14:1-12.3 through 12.5:

1. Measures taken by the claimant to prevent disclosure of the information to others;
2. Whether the information is contained in materials which are routinely available to the general public, including, without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

3. Whether the information is contained in materials that are routinely available to other government agencies, including, but not limited to Federal, state, and municipal agencies, whether or not such entities treat this information as confidential, and the reasons therefor;

4. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

5. If the Board, custodian or any other State or Federal agency or court of competent jurisdiction has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such determinations;

6. A description of any harmful effects which disclosure would have upon, including, but not limited to, the claimant's competitive or bidding position, trade secrets, proprietary commercial or financial information, or national security, and an explanation of the causal relationship between the disclosure and such harmful effects;

7. The period of time for which the claimant desires that the custodian treat the asserted confidential information as confidential information;

8. If known, any provision in a statute, rule, Order or other document, which would exempt the information from public disclosure; and

9. Any other substantiation which the claimant believes to be relevant in establishing that the custodian should determine the information to be confidential information.

(b) The substantiation shall be supported by an affidavit from a person with personal knowledge of the information, certifying its truth and accuracy.

(c) If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

(d) Substantiation may be updated and/or supplemented by the submittal of additional information at any time. However, if an update or supplement is submitted after the custodian receives a request for the release of information that is claimed as confidential, the custodian shall take the update or supplement into account in its confidentiality determination only to the extent that the deadlines in this chapter permit.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Added (a)3; and recodified former (a)3 through (a)8 as (a)4 through (a)9.

#### **14:1-12.9 Final confidentiality determination**

(a) If, after review of all the information submitted pursuant to this subchapter, the custodian determines that the asserted confidential information is not confidential information, the custodian shall as quickly as feasible:

1. Notify the claimant's designee of the determination through reasonable efforts to contact the designee by telephone, e-mail, fax, or other means provided in the designation submittal; and

2. Provide written notice that meets the requirements of (b) below to the claimant's designee.

(b) The written notice required under (a)2 above shall include the following:

1. The date on which the disclosure was made;

2. The name of the agency or other person to which the custodian disclosed the information that was claimed confidential;

3. A brief description of the information disclosed;

4. The basis for the determination; and

5. A statement that the written notice constitutes final agency action concerning the confidentiality claim.

(c) If after review of the substantiation submitted pursuant to this subchapter, the custodian determines that the asserted confidential information is confidential information, the custodian shall:

1. Treat such information as confidential;

2. Send written notice of the determination to the claimant and, if applicable, to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim; and

3. State in the notice the basis for the determination and that it constitutes final agency action.

(d) The custodian's determination under this section shall constitute final agency action.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a)1, substituted "the designee" for "them"; in (a)2, deleted "by certified mail, return receipt requested" from the end; in (c)2, inserted "and" at the end; in (c)3, substituted a period for "; and" at the end; and deleted (c)4.

#### **14:1-12.10 Treatment of information pending confidentiality determination**

The custodian shall treat asserted confidential information as confidential information until the custodian has made a final determination that the asserted confidential information is not confidential information.

#### **14:1-12.11 Availability of information to the public after determination that information is not confidential**

If the custodian has received a request for asserted confidential information in accordance with this subchapter and