

Information Concerning Confidential Information Requests

Instructions: To request confidential treatment of information or documents, review these instructions and use the last page of this document or a separate document to provide the required information. Multiple forms may be needed for larger requests. The Office will evaluate the responses provided to determine whether to approve or deny the request for confidentiality.

Document Upload Instructions

Upload the proposed confidential document(s) for which you are requesting confidential access to the secure and requested-confidential folder. These documents must be unredacted to ensure that the Office can evaluate the information that the submitter claims to be confidential. If possible, ensure that these documents have a “confidential” label on each page.

You must also upload redacted versions of the proposed confidential documents that can be publicly posted with the Material Change Notice. If the entire document must be redacted, then it is not necessary to upload a redacted version of that document. This only applies if justification for confidentiality of the entire document can be provided as described herein.

Marked-confidential versions of stock purchase agreement(s), compensation documents, contract rates, documents sufficient to show valuation of the transaction, and unredacted résumés are deemed confidential by the Office. You must upload these documents into the secure and requested-confidential folder. Identify any documents that are stock purchase agreements, valuation documents, compensation documents, or unredacted resumes. For documents containing contract rates, redact the rates as they appear throughout the document and use this form to inform the Office that the contract rates have been redacted. If those documents also include non-confidential information, the Office may post them with the contract rates redacted.

Duration of Confidentiality

You must state the specific time period for which confidential treatment is necessary. Requests for an indefinite period of confidentiality are only granted for documents deemed confidential and nonpublic by the Office pursuant to 22 CCR § 97438(d)(2), unless it can be demonstrated that indefinite confidential treatment is necessary (e.g. Protected Health Information).

Justification for Confidentiality

All proposed requests for confidentiality must be justified in accordance with 22 CCR § 97438(d). Identify proposed confidential information or document(s) and include a detailed statement explaining **why** the Office must treat the document or information as confidential. A separate document may be used to provide this information to the Office.

Marked-confidential versions of stock purchase agreement(s), compensation documents, contract rates, documents sufficient to show valuation of the transaction, and unredacted résumés are deemed confidential by the Office pursuant to 22 CCR § 97438(d)(2). For all other information and documents, even if similar in nature to the documents listed in 22 CCR § 97438(d)(2), confidentiality requests must be justified as described below.

If agreements between the parties are being used to show valuation of the transaction, additional justification for confidential treatment should still be provided.

Pursuant to 22 CCR § 97438(d)(3), the submitter must state whether any of the following applies when claiming confidentiality:

1. Whether the information is proprietary or of a confidential business nature, including trade secrets (as defined in California Civil Code section 3426.1(d)), and whether the release would be damaging or prejudicial to the business concern;
2. Whether another state or federal agency deems the filed document confidential and, if so, for what period of time;
3. Whether the information is confidential based on statute or other law; or
4. Whether the information is such that the public interest is served in withholding the information.

The Office will not consider requests for confidentiality that do not clearly relate to these factors. Be sure to clearly explain the reasoning for confidentiality in detail, using the above factors. Please also describe the efforts made to preserve the confidentiality of the requested information or document at all times.

The Office will not grant any request for confidentiality for documents or information that are publicly available.

For trade secrets, information must be provided establishing that the document or information is entitled to trade secret protections. A trade secret is “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (Civ. Code, § 3426.1, subd. (d)(1)-(d)(2).) To establish that this standard is met, please consider the following questions and provide responsive information to one or more questions as applicable:

- Can you confirm in writing that the information for which you are claiming trade secret status has never been released or disclosed to the general public?
- Can you confirm in writing that the information for which you are claiming trade secret status is currently unknown to those who are in your line of business?
- Could you describe how other organizations within your line of business could benefit from the public disclosure of the information for which you are claiming trade secret status?
- What type of resources have you devoted to maintaining the confidentiality of the information for which you are claiming trade secret status?
- How would your business interests be affected if the information for which you are claiming trade secret status were released to the general public?

The Office will communicate all decisions regarding confidentiality requests through the messaging system of the online portal.

22 CCR 97438(d) Confidentiality of Documents Submitted with Notice

All of the information provided to the Office by the submitter shall be treated as a public record unless the submitter designates documents or information as confidential when submitting through the Office portal system and the Office accepts the designation in accordance with paragraphs (1) through (3) below.

1. A submitter of a notice pursuant to this section may request confidential treatment of information or documents submitted. The submitter shall file two versions of any document for which confidentiality is requested. The nonpublic version shall be unredacted and shall be maintained as confidential by the Office and Department pending a determination of confidentiality. The public version, which may be made available to the public by the Office, shall have the confidential portions removed or redacted. Requests for confidentiality of publicly available information or documents will be denied.
2. Marked-confidential versions of stock purchase agreements, compensation documents, contract rates, transaction valuation documentation provided in response to subsection (c)(3), and unredacted résumés are deemed confidential and nonpublic by the Office, pursuant to section 127507.2(c)(2).
3. A submitter claiming confidentiality in respect to portions of a notice, or any documents not specified in subsection (d)(2) thereafter submitted in support of the notice, shall include a justification that provides a detailed statement of the grounds enumerated in (A) through (D), below, on which confidentiality is claimed, a statement of the specific time for which confidential treatment of the information is necessary, and a statement that the information has been confidentially maintained by the entity. The detailed statement in support of the request for confidentiality shall indicate whether any of the following applies:
 - A. Whether the information is proprietary or of a confidential business nature, including trade secrets (as defined in California Civil Code section 3426.1(d)), and whether the release would be damaging or prejudicial to the business concern;
 - B. Whether another state or federal agency deems the filed document confidential and, if so, for what period of time;
 - C. Whether the information is confidential based on statute or other law; or
 - D. Whether the information is such that the public interest is served in withholding the information.
4. When the Office makes a determination regarding a request for confidential treatment, the submitter will be notified in writing. If a request for confidential treatment is granted, the information will be marked "Confidential" and kept separate from the public file. With the exception of disclosure to the Attorney General pursuant to sections 127507.2(c)(1) and 127507.2(d)(1) of the Code, the Office and the Department shall keep confidential all nonpublic information and documents designated as confidential pursuant to this section.

Contact Information, Document Details, and Confidentiality Justification

Please provide the following information in the spaces below or on an attachment.

Contact Information

Name:

Title:

Company/Organization:

Document Details

- **Title of Document**
- **Purpose of Document**

Confidentiality Justification

- **Duration of Confidentiality**
- **Justification for Confidentiality**
- **Description of How Document Has Been Confidentially Maintained**