# Policies and Procedures Relating to the Submission and Treatment of Confidential Information

## I. Purpose

The purpose of these policies and procedures is to provide guidelines to ensure that information believed to be exempt from public disclosure but necessary to the agency's consideration can be quickly identified, and that appropriate staff have sufficient information to determine whether the information should be entitled to protected treatment. The goal is to allay any fear that such information may be improperly utilized or disclosed, thereby allowing for the free flow of sensitive information into OHS so that it may properly perform its regulatory functions.

## II. Definition(s)

For purposes of these procedures, "Confidential Material" is defined as any information and/or documentation that may be exempt from public disclosure under the state's Freedom of Information Act (FOIA) pursuant to Connecticut General Statutes (CGS) § 1-210(b).

## III. Filing Requirements If Protection is Sought

**IMPORTANT NOTE:** OHS will not accept any hard copies in lieu of electronic copies, nor can it guarantee the confidentiality of any such hard copy filings.

Any individual who wishes to submit records that they believe constitute Confidential Material (the "Lodged Record"), and seek to have such Lodged Record sealed (i.e., protected from public disclosure), shall follow the below procedure:

1. **Scope of Protections:** The individual submitting the Lodged Record (the "Filer") shall limit the request for protection to only the information and/or documentation that is genuinely believed to require such confidentiality protection. For example, if a single page of a multi-page Lodged Record requires a confidential designation, then only protection for that page should be sought rather than the full Lodged Record. Similarly, if only a portion of single page document is believed to require a confidential designation, then only protection for that portion of the document should be sought through redaction.

2. **The Motion:** The Filer shall submit a Motion to Seal (the "Motion") requesting an exemption from public disclosure of the information and/or documentation believed to constitute Confidential Material. The Motion must:

    a. provide specific legal arguments with reference to state and/or federal law describing with supporting facts why the information and/or documentation should be sealed; and

    b. have appended to it a certified affidavit supplied by a competent individual which attests to the truth and veracity of the facts supplied in the Motion.

3. **Submission of the Motion:** For Certificate of Need (CON) proceedings, the Filer shall submit such Motion electronically in the public CON Portal in the docket to which the Motion pertains. Simultaneously with the filing, the Filer shall submit a copy by email to OHS.Confidential@ct.gov. For non-CON proceedings, such Motion shall be filed by email to OHS.Confidential@ct.gov.

4. **Lodging of the Record:**

    a. The Lodged Record shall be submitted electronically by email to OHS.Confidential@ct.gov. No other email addresses ending "ct.gov" should be included as a recipient to this email; however, the Filer may include others from within its own organization as well as legal counsel (if applicable). Such Lodged Record shall not be submitted into any publicly accessible OHS portal including, but not limited to, the CON Portal. The file size limitation for any single email sent to this email inbox is 39 MB.

    b. The subject line of the email in which the Lodged Record is sent shall state in all capital letters: "CONFIDENTIAL MATERIAL - NOT FOR PUBLIC DISCLOSURE." The Filer shall also include in either the subject line, the body of the email, or a combination of both, the Docket Number (if any), the name of the filing person or entity, the number of pages included, and a brief description of the contents (e.g., "Response to Application Main Form, Question 5").

5. **Identification of Potential Confidential Material:** The Filer shall include a cover sheet on the Lodged Record, which must be clearly labeled with the Docket Number (if any), the name of the filing person or entity, the date, the number of pages included, and a brief description of the contents (e.g., "Response to Application Main Form, Question 5"). The cover sheet should not include confidential information since it could be made public. Additionally, each page of the Lodged Record shall also contain the words "CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE" in a clear and conspicuous location, such as the header or footer.

6. **Additional Requirement for CON Proceedings:** When a Filer believes that only a portion or portions of a Lodged Record constitute Confidential Material, the Filer shall submit a redacted version of the Lodged Record into the CON Portal at the same time as the Motion itself.

## IV. Filing Requirements If Protection Has Already Been Granted

If confidentiality protections have already been granted on a certain category of information, subsequent filings of that type of information do not require an additional Motion to Seal. The Confidential Material shall be filed as described above, and a redacted version of the document(s), also as described above, should also be filed.

## V. Agency Treatment of Lodged Records

Other than as described above, the following additional information is relevant to the agency's treatment of Lodged Records:

1. **Secure Electronic Storage:** Once a Motion and Lodged Record are submitted, an authorized agency staff member will store the Lodged Record in a secure Microsoft SharePoint or SharePoint channel. The staff member will grant access only to such other agency staff, OHS engaged contractors/consultants (if applicable), and members of the Connecticut Office of the Attorney General (if applicable), as is necessary.
2. **Preliminary and Final Orders:** If the Commissioner of OHS issues an order on the Motion, that order is final. However, if an agency staff member other than the Commissioner issues a preliminary order, then such order is not final.
3. **Denials of Motions:** For both CON and non-CON proceedings, if an agency staff member issues a preliminary order denying a Motion either in whole or in part, then the Filer may request that the final decisionmaker intervene, review and issue a final ruling on the Motion. If the final order remains a denial, or if the Filer does not wish to seek a final ruling on the Motion, there are several other options for disposition of the Lodged Record depending on the nature of the proceeding:
    a. For CON proceedings: (1) upon written permission of the Filer, agency staff shall make the Lodged Record part of the public record; (2) upon written request of the Filer, agency staff shall retain the Lodged Record so that in the event the Filer appeals the denial of the Motion to the Superior Court, the Lodged Record can be made part of the record on appeal; or (3) if none of the

above apply, agency staff shall delete the Lodged Record from the secure electronic location. If the Lodged Record is retained for appeal pursuant to (2) above, OHS staff shall delete it upon expiration of the appeal period if no appeal has been filed.

b. For non-CON proceedings: (1) upon written permission of the Filer, agency staff shall make the Lodged Record part of the public record; or (2) the agency staff shall delete the Lodged Record from the secure electronic location.

4. **Granting of Motions:**

   a. For CON proceedings where a redacted version of the Lodged Record has not already been uploaded into the electronic CON Portal, OHS shall upload the Filer's cover sheet (described above) to the CON docket. Thereafter, the processes and procedures set forth below in paragraph 5 onward shall apply.

   b. For non-CON proceedings, the processes and procedures set forth below in paragraph 5 onward shall apply.

5. **Protections for Executive Session:** If there is a hearing or other type of public meeting, and Executive Session is required in order to address the Confidential Material (see C.G.S. §§ 1-200(6), 1-225(f), 1-231), the Court Reporter (if any) shall be required to affirm that s/he shall maintain the confidentiality of the testimony. Additionally, any transcript from such Executive Session shall be given the same protections as the Confidential Material itself. Such protections include, but are not limited to, storage in a secure SharePoint or SharePoint channel.

6. **Special Considerations for CON Hearings:** For CON proceedings only:

   a. For any transcript from an Executive Session, OHS will make a public filing in the docket. Such public filing shall state that the transcript is not subject to disclosure.

   b. Any Table of Record shall maintain the protections afforded to the Confidential Material.

   c. If the open session of a public hearing is held via Zoom, Teams, or other electronic communications platform, and the open session is video recorded, then any Executive Session in the same proceeding will also be held via Zoom, Teams, or other electronic communications platform and video recorded. However, Executive Session recordings shall only be stored in the secure SharePoint or SharePoint channel and shall be treated in the same manner as the remainder of the Confidential Material.

7. Unless a Filer provides written authorization for the disclosure of a Lodged Record to outside parties, any Lodged Record that comes into OHS is only for OHS use and the use of its contractors/consultants and legal counsel (as applicable) only. To the extent that OHS shares a Lodged Record with its contractors/consultants or legal counsel, use by these individuals shall be limited to the needs of OHS for the given matter in which the Lodged Record has been submitted.
8. In any order, ruling or action, OHS staff may reference Confidential Material that they based their decision on, but they will not disclose the specifics of the actual information in the decision.
9. Nothing in these Policies & Procedures or otherwise shall preclude OHS from complying with a court order or lawfully issued subpoena.

Please also note that all OHS staff sign a confidentiality pledge and non-disclosure agreement upon hire. Agency contractors/consultants sign similar documents upon engagement.

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