



Guidelines for excluding confidential information from the public register for authorisation (merger and non-merger) and notification processes

Public process

The Australian Competition and Consumer Commission (ACCC) is responsible for assessing merger and non-merger authorisation applications and notifications under the *Competition and Consumer Act 2010* (the Act). Authorisation and notification provide legal protection from the competition provisions of the Act for specified conduct. In accordance with the Act, the ACCC's assessment of authorisation applications and notifications is conducted openly and transparently and is informed by public consultation.

The Public Register

Under the Act, the ACCC must keep a public register of documents relating to authorisation applications and notifications including the application or notification itself, documents provided to the ACCC and records of oral submissions made in relation to the application or notification.

The purpose of the public register is to enable the authorisation and notification process to be as open and transparent as possible, particularly so that claims made in support of a proposal can be tested and interested parties have the opportunity to put their views.

The ACCC's authorisation and notification public registers are available on our [website](#).

Can information be excluded from the public register?

When you provide information in relation to an authorisation application or notification, you may ask the ACCC to exclude that information, or parts of it, from the public register if it is confidential. Such requests must be made at the time that the information is given to the ACCC and must be substantiated.

The ACCC considers such requests in accordance with the Act and on a case-by-case basis.

Under the Act, when a request to exclude information from the public register for confidentiality reasons is made, the ACCC:

- *must* exclude particulars of a secret formula or process, the cash consideration offered for the acquisition of shares or assets and the current costs of manufacturing, producing or marketing goods or services
- *may* exclude other information if it is satisfied that it is desirable to do so by reason of the confidential nature of the information in question.

The ACCC also has a broad discretion to exclude information from the public register for reasons other than confidentiality and without a request being made from the person who provided the material (for example, if it is potentially defamatory).

Can the authorisation application or notification be excluded from the public register?

An application for authorisation or notification itself cannot be entirely excluded from the public register, although material accompanying the application or notification can be excluded.

A person can provide confidential and non-confidential versions of an authorisation application or notification, together with a request that the confidential information in the confidential version be excluded from the register and detailed reasons for that request.

Where appropriate, and provided that an authorisation application or notification contains sufficient information to enable public consultation, the ACCC will include only the non-confidential version on the public register.

Generally speaking, the ACCC will not exclude information from the public register version of an authorisation application or notification where that information is necessary to identify the conduct, arrangements or proposed acquisition the subject of the application or notification.

How to request information be excluded from the public register

Any requests for information to be excluded from the public register for confidentiality reasons must be made at the time that the information is provided to the ACCC. Reasons must be provided in support of the request.

The Competition and Consumer Regulation 24 provides that if such a request is made for a whole document or part of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page. When a request is made for exclusion of part of a document, the Regulations state that the words 'Restriction of Publication of Part

Claimed' should appear in red near the top of the first page and the part of the document for which exclusion is requested should also be clearly marked in red. If the request concerns a document longer than five pages, a description of the whereabouts of the parts for which exclusion is requested should be provided.

The ACCC will consider requests for exclusion from the public register that do not comply with Regulation 24, provided the request clearly identifies the particular information said to be confidential and gives detailed reasons for the request. You should also provide a full copy of the document, and a public register version which does not include the information said to be confidential.

You should remove headers claiming 'Confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If the information is not confidential and the header cannot be removed, you should clearly state at the beginning of correspondence to the ACCC that exclusion from the public register is not requested.

How does the ACCC assess requests to exclude confidential information from the public register?

The ACCC will not place material that is subject to a request for exclusion on the public register while we assess the request.

We aim to respond to requests to exclude information from the public register within an appropriate timeframe. We can assess your exclusion request more quickly if you limit the claim to information that is genuinely confidential, ensure you mark confidential information clearly, and provide detailed reasons for the request.

When the ACCC decides to exclude documents or parts of documents containing the confidential information from the public register, we may still use this information in our consideration of the authorisation application or notification, and for other purposes consistent with our statutory functions under the Act.

When information is excluded from the public register, this may limit the ACCC's ability to test that information which may, in turn, limit the weight we are able to give to the information when assessing the authorisation application or notification. For this reason, even where the person who requested exclusion cannot provide a public version of a document or submission, the ACCC may decide to summarise the confidential information in order to include it on the public register so that others can respond to it, particularly if the submission raises issues or arguments that are not in other (publicly available) submissions. In most circumstances, the ACCC will consult with the person who provided the confidential information before doing so.

If the ACCC refuses a request to exclude information from the public register, we will inform the party making the request of our decision. As a general rule, the ACCC will allow the party one to two business days to respond. If the party advises that it does not maintain the request for exclusion, the ACCC will accept the information and publish it on the public register. Otherwise, the party will be taken to have withdrawn the information, in which case the ACCC will return the information and will not take it into account in our decision-making processes.

Disclosure of confidential information (including confidential information excluded from the public register)

The ACCC is committed to treating confidential information responsibly and in accordance with the law.

The ACCC accepts confidential information on the following basis:

- there is no restriction on the internal use, including future use, that the ACCC may make of confidential information consistent with the ACCC's statutory functions
- confidential information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 89(7) or section 155AAA of the Act.

In some circumstances, the ACCC may be legally required to disclose confidential information, for example under the *Freedom of Information Act 1982* or as part of Court or Tribunal processes.

The Act also provides the ACCC with the ability to disclose information in certain circumstances. For example:

- under s89(7), the ACCC may disclose information excluded from the public register to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application concerned. Section 89(7) relates to authorisation applications and does not apply to notifications
- under s155AAA, the ACCC is permitted to disclose confidential information relating to certain ACCC functions under the Act to certain ministers, government departments, royal commissions and other government agencies (including international competition and consumer agencies).¹

In such situations, the ACCC will endeavour to notify and consult the person who provided the confidential information about the proposed disclosure of that information.

Contacting the ACCC

ACCC staff can provide guidance on preparing an authorisation application or a notification, including on issues of confidentiality.

If you have any questions about excluding information from the public register, please contact exemptions@acc.gov.au for applications for non-merger authorisation applications or notifications, or mergers@acc.gov.au for merger authorisation applications.

Checklist for requesting confidential information be excluded from the public register

- Have you identified the specific sections of the document to which the request relates?
- Have you outlined reasons for requesting that the document or information be excluded from the public register?
- Have you provided a copy of the full document and highlighted the confidential sections?
- Have you provided a public register version of the document and masked or removed those parts you want excluded?
- Are you aware that requests to exclude confidential information from the public register must be made at the time the information is provided to the ACCC?

¹ For more information, see the ACCC's Information Policy on The collection, use and disclosure of information.

Related publications

[Merger Guidelines](#)

[Informal Merger Review Process Guidelines](#)

[Merger Authorisation Guidelines](#)

[Guidelines for Authorisation of Conduct \(non-merger\)](#)

[Small Business Collective Bargaining Guidelines](#)

[Exclusive Dealing Notification Guidelines](#)

[Resale Price Maintenance Notification Guidelines](#)

ACCC contacts

Infocentre: 1300 302 502

Website: www.accc.gov.au

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