

YESAB
Yukon Environmental and
Socio-economic Assessment Board

GUIDANCE

**DESIGNATION OF CONFIDENTIAL
INFORMATION IN YESAA ASSESSMENTS
- ACCESS TO INFORMATION ACT
EXEMPTION -**

October 2024





Yukon Environmental and
Socio-economic Assessment Board

**Confidential Information Designation under Section 121(b) – Yukon
Environmental and Socio-economic Assessment Act (YESAA)
Access to Information Act Exemption**

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PREFACE

The purpose of this public guide is to:

- Provide an overview of what types of information qualify as confidential information, what is required in the application, and the process for designation for Executive Committee Screenings and Designated Office Evaluations.
- Provide specific information relating to the designation of *Access to Information Act* Exemption as confidential information.

This guide applies to *Access to Information Act* Exemption applications for Confidential Information Designation under Section 121(b) of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). Information related to Confidential Information Designation under Section 121(a) – Yukon Environmental and Socio-economic Assessment Act (YESAA) Traditional Knowledge is available here.

Disclaimer

This document is not intended to provide legal advice or direction. It is for information purposes only, and should not be used as a substitute for YESAA or its associated regulations and rules. In the event of a discrepancy, YESAA, regulations, and rules prevail. YESAB retains the discretion to deviate from the procedures described in this Bulletin where appropriate.

INTRODUCTION

YESAA provides legislative provisions for the designation and management of confidential information. Both Designated Office evaluations and Executive Committee screenings application are submitted to the Executive Committee. Confidential information applications can be submitted by the proponent with a proposal, or from an assessment participant.

The Executive Committee will meet to review the application and make the determination as soon as possible. All information designated as confidential under YESAA will be given full and fair consideration in an assessment. There are many benefits to having information deemed confidential included in an assessment such as greater knowledge and understanding of the environment in which the project is proposed, the potential impacts of the project, or determining significance of likely adverse effects.

TYPES OF CONFIDENTIAL INFORMATION

There are two categories of information that fall within the confidential information designation in YESAA. The information will either be:

1. Traditional Knowledge (TK), or
2. Information that is protected from disclosure under the Government of Canada [Access to Information Act \(ATIA\)](#).

APPLICATION FORMS

Application forms are available on yesab.ca. The application form lays out the necessary information that must be provided in the package and how to submit the information to the Executive Committee. Note that different application forms and requirements apply between applications to designate Traditional Knowledge as confidential, and applications to designate ATIA exempt information as confidential.

FILE FORMATS

The application form is submitted in writing but for this purpose, the actual content of the confidential information can be written, video, audio, photos, GIS shapefiles, or maps.

Different file formats may be accepted, and for further instruction about file format standards for the confidential submission, contact the Executive Committee Manager.

INFORMATION REQUIREMENTS

This section explains how to complete the application and what must be provided for the Executive Committee to make their decision about whether to designate the information as confidential under s.121(b).

- Fill out all sections of the applicable application form
- If submitting written confidential information, separate the confidential information from the application form in another envelope and mark the sealed application envelope with "Confidential".
- Submit the application to the Executive Committee Manager at Head Office.

ACCESS TO INFORMATION EXEMPTION DEFINITION

Section 121(b) of YESAA specifies which information is protected from disclosure pursuant to a request by that person or body if it falls under the exemption categories of ATIA. These exemption categories within ATIA are listed.

ATIA Exemption Categories:

Section	Exemption Categories
13	Information obtained in confidence
14	Federal-provincial affairs
15	International affairs and defence
16	Law enforcement and investigations
17	Safety of individuals
18	Economic interest of Canada
19	Personal Information
20	Third party information
21	Advice etc.
22	Testing procedures, tests and audits
23	Solicitors, advocates and notaries
24	Statutory prohibitions against disclosure

25	Severability
26	Refusal of access where information to be published

The applicant must identify the section of ATIA that limits the disclosure of this information. Further, if the information sought to be designated as confidential includes the personal information of a third party (i.e. someone other than the applicant), then the application must include the third party's written consent to the collection and use of this information by YESAB. If you are applying on the basis of s.19 (personal information), refer to [YESAB's privacy statement](#), specifically the section on third party personal information.

As an example of where information could be designated as confidential under s.121(b): in a previous assessment, a professional hunting guide submitted information regarding location, habits, environmental requirements, and biological understandings of a specific population overlapping with the proposed project area. This information was found to come within the exemptions set out under s.20(1)(b) and (c) of the ATIA: in that case, scientific or technical information had been consistently treated in a confidential manner by the applicant, and disclosure of the information could reasonably be expected to result in material financial loss of the applicant.

It is important to emphasize that s.121(b) relates to the federal ATIA, **not** Yukon's *Access to Information and Privacy Protection Act*. The exemptions under these two pieces of legislation are not the same. By identifying the applicable exemption section under the federal ATIA can confirm the information falls under s.121(b) of YESAA.

ACCESS TO INFORMATION EXEMPTION DETERMINATION

The Executive Committee must determine that the information agrees with the exemption categories in ATIA. To help with this determination, provide a rationale for why you are of the view this information comes within this ATIA exemption and the importance of the information in relation to the assessment or proposal. The *Rules for Evaluations Conducted by Designated Offices* (DO Rules 38b, 41,43) and the *Rules for Screenings Conducted by Executive Committee* (EC Rules 82, 85) provide direction to the Executive Committee. The Executive Committee must be satisfied that the three different criteria are met. In the sections below, details are provided about each of the criteria to help the applicant complete the application form:

Criteria #1: Relevance of Information to the Assessment

The Executive Committee must determine the information provided is relevant to the proposal or assessment. The applicant should consider how the information relates to the assessment, the intention of its use or how it supports your position. This could mean that the information is relevant to the assessors' understanding, consideration, or determination of any of the following:

- project scope and activities
- baseline effects
- identification and analysis of potential effects

- effects mitigation
- significance of project effects

Criteria #2: Disclosure is Prohibited

ATIA explicitly defines which records are protected from disclosure under the ATIA. In addition to identifying the exemption category in the application, be sure to provide the necessary explanation to convey to the Executive Committee that disclosure of the information does not occur under ATIA. Note that different exemption categories require specific information that only the applicant would be in a position to speak to and should be addressed in the application.

Criteria #3: Sufficient Non-Confidential Summary

All applications must include a non-confidential summary of the information. The summary is provided for assessment participants to understand, generally, what the information is without revealing details. The summary will be available on YESAB's online registry. If the Executive Committee determines that the non-confidential summary does not meet the requirements, the applicant will be notified in writing of this and is given an opportunity to resubmit the summary.

APPLICATION SUBMISSION

To submit electronically, contact the [Executive Committee Manager at Head Office](#) for Secured File Transfer details.

Or submit a hardcopy application, drop off at the Whitehorse Head Office:
Suite 200-309 Strickland Street
Whitehorse, Yukon Y1A 2J9

PROCESS INFORMATION

A senior assessment officer at Whitehorse Head Office will confirm your application has been received and will remain the point of contact throughout the process. The Executive Committee are responsible for making the determination as to whether to designate the information as confidential under s.121(b). The applicant may be contacted for clarifications by the Executive Committee or if the non-confidential summary is insufficient before proceeding with the designation.

The rules provide for the Executive Committee to seek additional views or information from any person before making their decision. If the Executive Committee seeks such views or information, the confidential information itself will not be disclosed to the person they are seeking views or information from. The Executive Committee may, however, share some or all of the other information in the application, such as the non-confidential summary, for this purpose. Once the Executive Committee has determined whether or not they will designate the information as confidential under YESAA, they will prepare a decision letter and send this to the applicant.

NO DISCLOSURE OF INFORMATION AFTER DESIGNATION

YESAB will not disclose information designated as confidential under s.121(b) to anyone.

There is the potential for assessors to disclose information designated as confidential under s.121(b) only to decision bodies unless you (the applicant) agree. Specifically, this can only occur if:

(i) the person or entity who made the s.121(b) application consents to its disclosure to the decision body, and

(ii) the decision body

- would not required to disclose the information pursuant to a request under a territorial or first nation law, and
- agrees to keep the information confidential.

If the Executive Committee has designated information as confidential under s.121(b), the assessor will contact you to discuss whether or not there is agreement to disclose this information to the decision body. If the applicant does not agree to disclosing the information to the decision body, the assessor will not disclose that information to them.

INFORMATION MANAGEMENT

YESAB has strict protocols in place to ensure the application and contents are secure during and following the s.121 application process.

Note that if information is submitted for consideration of an assessment, and has been designated as confidential under s.121(b), that determination is project specific. In other words: if you would like the information to be considered in more than one assessment, or in a subsequent assessment, a separate and additional application must be submitted for those other projects.

At the Designated Office level, if a project is referred to the Executive Committee under 56(1)(d), and confidential information was considered in the assessment, the confidential information will be provided to the Executive Committee along with the other documents relating to the project.

PUBLIC REGISTRY INFORMATION

The Executive Committee will provide the applicant with a letter setting out their decision as to whether to designate the information as confidential, and reasons for this decision. The letter will be publicly available on YESAB's online registry in both circumstances. The non-confidential summary will also be publicly available if the information is designated as confidential.

INFORMATION NOT DESIGNATED CONFIDENTIAL

If the Executive Committee concludes the information does not meet the test to designated it as confidential under YESAA, it will not be considered in the assessment. The application and information will be returned to the applicant. In the result, the information can only be considered in the assessment if the applicant provides the information on a non-confidential basis, or if the assessor receives the information from someone else.

For more information about the designation of confidential information under s.121(b) Access to Information exemptions, contact the Executive Committee Manager at **Head Office:**

Telephone: 867-668-6420

Toll Free: 1-866-322-4040

Email: yesab@yesab.ca

UFA CONNECTION TO INFORMATION HELD IN CONFIDENCE BY YESAA

YESAA was enacted to meet a commitment in the Umbrella Final Agreement between the Government of Canada, the Council of Yukon First Nations and the Government of Yukon

The Umbrella Final Agreement (“UFA”), and Chapter 12 in particular, sets out an over-arching framework for a development assessment process in Yukon. The agreement required and contemplated that elements of this process would be further developed through legislation enacted by Canada or Yukon.

In 2003, ten years after the UFA was signed, YESAA was given Royal Assent. YESAA specifies that in the event of an inconsistency or conflict between a final agreement and YESAA, the agreement prevails to the extent of the inconsistency or conflict.

YESAB has a special relationship with the UFA and the unique environmental and socio-economic assessment legislation that it created. We recognize that we are one of many organizations with a role to play in meeting its spirit, intent and purpose.

As the Government of Canada works towards the implementation of the United Nations Declaration of the Rights of Indigenous Peoples Act, YESAB will continue to incorporate many of the principles underlying UNDRIP and the Truth and Reconciliation Commission’s calls to action via YESAB rules and organizational initiatives.

Provisions in the [Umbrella Final Agreement](#) relevant to the process set out in s.121 of YESAA include, but are not limited to:

- 12.1.1.2
- 12.4.2.10
- 12.6.2
- 12.8.3
- 12.19.2