

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Jennifer A. Catechis

BULLETIN 2022-001

January 3, 2022

TO: ANY PERSON WHO SEEKS CONFIDENTIAL TREATMENT OF MATERIAL OR INFORMATION FILED WITH OR SUBMITTED TO THE LIFE AND HEALTH DIVISION OF THE OFFICE OF SUPERINTENDENT OF INSURANCE (“OSI”)

RE: RECISSION OF BULLETIN 2014-004 AND NEW CONFIDENTIAL TREATMENT REQUEST PROCESS

Section 59A-2-12(B) NMSA 1978 authorizes the Superintendent of Insurance to classify as confidential records and information obtained from an outside source “upon the express condition that they remain confidential * * *.” This authority does not apply to a filing that is required under the Insurance Code, unless the filed material is confidential under other law, including but not limited to, the Uniform Trade Secrets Act (“UTSA”). Sections 57-3A-1 to 57-3A-7 NMSA 1978.

To implement Section 59A-2-12(B), Bulletin 2014-004 directed regulated entities who wanted the Life and Health Rate & Form Filing Bureau to treat certain filings, or information within a filing, confidential, to follow specified processes. Based on recent interpretations of the Inspection of Public Records Act (“IPRA”), filers have questioned whether the existing processes sufficiently protect confidentiality and ensure that confidential filings are not inadvertently produced in response to an IPRA request. To address those concerns, this Bulletin rescinds Bulletin 2014-004 and details new confidentiality request processes that will formalize confidentiality determinations, enable the OSI to track dispositions of confidential treatment requests and guard against inadvertent disclosure of confidential information.

Confidential Treatment Request Form

To request confidential treatment of a document or information, a person must submit a complete confidential treatment request form and supporting declaration at least 10 days before submitting the document or information. Both are available here: https://www.osi.state.nm.us/wp-content/uploads/2021/11/REQUEST-FOR-CONFIDENTIAL-STATUS_11-4-2021.pdf. Submit both

completed forms to Freya.Tschantz2@state.nm.us. Filers are strongly encouraged to file earlier than 10 days before submitting the document or information.

NOTICE: IF MATERIAL IS SUBMITTED BEFORE OR WITH THE CONFIDENTIAL TREATMENT REQUEST FORM, IT MAY BE CONSIDERED A NON-CONFIDENTIAL PUBLIC RECORD PURSUANT TO IPRA.

The confidential treatment request form requires disclosure of sufficient information concerning the subject material to enable the OSI reviewer to understand the nature of the material, but not the exact content or substance. The supporting declaration must sufficiently explain why the material should be treated confidentially. Conclusory statements that material is proprietary, a trade secret or would cause injury if released will not suffice and may result in summary rejection of the request. If a requestor asserts the subject material is protected by law, the requestor must identify that law and explain how the material meets the substantive legal standards. To deem material confidential, OSI needs facts and analysis sufficient to satisfy judicial review requirements.

If a requestor reasonably believes that disclosing sufficient detail to enable OSI to evaluate a request would reveal confidential information, the requestor should so note in the confidential treatment request form and ask to discuss the concern with the assigned OSI reviewer. The OSI assigned reviewer may also initiate such a conversation or request a virtual viewing of the subject material to aid review of a request.

OSI Review and Determination

The OSI will review confidential treatment requests according to the exigencies. Requestors are encouraged to submit a request at the earliest opportunity, and as far in advance of any deadline as possible.

OSI will either reject the request, approve the request, or seek additional information to evaluate the request. OSI will document its determination on the request form and return that to the requestor. If OSI allows a request, OSI will also provide the requestor with instructions for submitting the confidential material. The instructions will include a requirement that the documents be marked with a unique brand that will enable OSI to log and track the documents. The OSI approval document must be attached to any filing or submission. Documents submitted without the specified brand, the OSI approval document or contrary to the submission instructions may lose confidential treatment.

OSI will notify the requestor of a rejected request. The requestor must then decide whether to submit the material. Denial of a confidential treatment request does not excuse a person from any required filing or OSI data request obligation.

Exigent Request

If any law, OSI personnel, or OSI contractor, requires material or information to be submitted in fewer than 10 days, such as a response to a rate filing objection, the filer may informally request confidentiality contemporaneous with the filing or submission, and submit a formal confidentiality request within the next 90 days. OSI will treat the materials as confidential pending the confidentiality review. However, if OSI rejects the confidentiality request, the materials cannot be withdrawn and will be considered a public record by OSI.

Post-Submission Request

A filer may submit a confidential treatment request form and supporting declaration to request confidential treatment of a prior filing. Any such request must be submitted within 90 days of the filing. If OSI rejects a post-submission confidentiality request, the materials cannot be withdrawn and will be considered a public record by OSI.

Incomplete Data

A confidentiality request can be submitted before the requestor has compiled all data that is the subject of the request. In such circumstances, the confidentiality request declaration must state that data are still in development and describe the subject matter of the data with sufficient particularity to allow evaluation of the request.

Confidentiality Policy

The OSI is committed to New Mexico sunshine policies favoring the broadest possible public access to government records. To that end, the OSI will not routinely grant requests for confidential treatment. To receive confidential treatment, a requestor will need to establish that:

1. information is protected by law;
2. disclosure is likely to expose a person to retaliation or adverse legal consequences;
3. disclosure could result in physical harm, significant financial injury, or severe emotional distress to a person;

4. disclosure could result in a competitive disadvantage in a trade, occupation or business; or
5. disclosure could result in reputational injury to a person or business.

Again, a conclusory statement of possible harm will not suffice. A request based on the Uniform Trade Secrets Act must explain how the requestor maintains the secrecy of the information, why the information has independent economic value and the harm that could result from disclosure.

Reliance

OSI's confidentiality determinations do not bind the courts. Because a court could conclude that information considered confidential by OSI is either a public record or discoverable in connection with a judicial proceeding, OSI makes no express or implied representation or warranty in connection with any confidentiality determination. To the contrary, a requestor shall rely solely on its own assessment of New Mexico confidentiality laws in determining whether to submit information to OSI.

Questions concerning the information in this Bulletin should be directed to Freya.Tschantz2@state.nm.us.

ISSUED this 3rd day of January, 2022.



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Superintendent of Insurance