

Decision POPRC-2/12: Confidentiality arrangements

The Persistent Organic Pollutants Review Committee,

Recalling paragraph 19, relating to the confidentiality of data, of the terms of reference of the Persistent Organic Pollutants Review Committee, as adopted by the Conference of the Parties of the Stockholm Convention in its decision SC-1/7,

Also recalling paragraph 5 of Article 9 of the Convention,

Recalling further decision SC-2/8 of the Conference of the Parties,

Emphasizing that any Party or observer submitting information shall endeavour to ensure that such information is non-confidential,

Decides to submit the draft code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee, as contained in the annex to the present decision, to the Conference of the Parties for consideration at its third meeting.

Annex to decision POPRC-2/12

Draft code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee

I. Principles

1. It is understood that designation of information as confidential could limit the ability of the Committee to exercise fully its mandate as a subsidiary body to the Conference of the Parties of the Stockholm Convention which should work in an open and transparent way. Therefore, any Party or observer submitting information shall endeavour to ensure that such information is non-confidential.
2. Pursuant to paragraph 5 of Article 9 of the Convention, information on health and safety of humans and the environment shall not be regarded as confidential.
3. In application of paragraph 5 of Article 9 of the Convention, the following information shall not be identified and labelled as confidential for the purposes of the work of the Committee:
 - (a) Information submitted pursuant to paragraphs (a) (iii) and (b)–(g) of Annex E to the Convention;
 - (b) Information submitted pursuant to paragraphs (b) (iv), (c) (i)–(iii) and (e)–(g) of Annex F to the Convention;
 - (c) Information which cannot be labelled as confidential according to domestic legislation of the State or regional economic integration organization of the origin of the information;
 - (d) Information otherwise available in the public domain.
4. In accordance with paragraph 5 of Article 9 of the Convention, Parties that exchange other information shall protect any confidential information as mutually agreed.
5. Any Party or observer shall have the right to designate information or parts of it as confidential, except as otherwise provided in paragraphs 2 and 3 above, and request that its confidentiality be protected in accordance with this code.
6. Access to confidential information shall be restricted to members, authorized staff members of the Secretariat and the Party or observer that submitted it. Confidential information shall not be disclosed in any way to any other person, whether legal or physical. Confidential information shall not be put in the public domain. Confidential information shall be protected from unauthorized disclosure.

I. Definitions

7. For the purpose of this code:

(a) "A member" means a member of the Committee, appointed under paragraphs 2–9 of the annex to decision SC-1/7 of the Conference of the Parties ("Terms of reference of the Persistent Organic Pollutants Review Committee"), who has filed with the Chair a declaration of non-disclosure;

(b) "The Secretariat" means the Secretariat of the Stockholm Convention;

(c) "Information" means any type of information or data provided to the Committee under Article 8 of the Convention;

(d) "Confidential information" means any information that has been designated as confidential by the Party or observer who submits the information in accordance with the principles set above, and that is not otherwise available in the public domain;

(e) "Recommendations and reports" means recommendations and reports to the Conference of the Parties adopted by the Committee under paragraphs 33–35 of the annex to decision SC-1/7;

(f) "Decisions" means decisions adopted by the Committee under paragraph 35 of the annex to decision SC-1/7;

(g) "Declaration of non-disclosure" means a copy of the declaration set forth in the appendix to the present code.

II. Scope

8. This code shall be applied to information submitted to the Committee under Article 8 of the Convention for the work at its meetings, in the intersessional period and to the work of any working group established under paragraph 29 of the annex to decision SC-1/7, and to the use of conclusions based on and reference to confidential information in recommendations and reports of the Committee.

III. Identification

9. Indication of any information to be put forward by a Party or observer as confidential shall be submitted separately, and in hard copy, from other information, shall be clearly identified and labelled as confidential, and requires the application of this code. The assertion of confidentiality shall be accompanied by documentation of the Party's or observer's basis for such identification.

10. When receiving an indication that a Party or observer intends to label some information as confidential, the Secretariat or the Chair of the Committee shall consider with the Party or observer the need for such a labelling, and agree on the applicability of this code to the information item in question, including the modalities of delivery of such information to or accessibility to it by members.

11. In the event that an agreement is reached on the labelling of an information item as confidential, the procedures described below shall apply.

12. If no agreement is reached on the labelling of an information item as confidential, the information may be withdrawn by the Party or observer submitting the information.

13. The Party or observer shall, to the extent practicable, on the basis of the information submitted by it, provide reformulated document in which the confidential information is rendered into non-confidential information.

IV. Procedures

Submission of confidential information

14. A Party or an observer may submit information that it deems to be confidential to the Secretariat. The Party or observer shall be responsible for any contractual or other arrangements for the transmission of this information until the Secretariat confirms its receipt.

15. Confidential information shall normally be submitted in writing in hard copy by Parties or observers in accordance with this code. The information shall not be stored in an electronic database, unless otherwise agreed with the Parties or observers upon submission of the information.

16. All documents submitted by Parties or observers with confidential information shall be marked clearly as “confidential” on a separate cover page, with labels marking it as such on all pages.

17. The Secretariat shall confirm receipt of a request for confidentiality and provide a written assurance to the Party or observer that the information will be protected in accordance with this code.

Handling of confidential information

18. The Secretariat shall take measures to ensure that any information it receives that has been designated as confidential by a Party or observer is protected in accordance with this code.

19. The Secretariat is responsible for ensuring proper receipt, storage and handling of confidential information. To this end, the Secretariat shall establish a logging system for tracking the receipt and handling of confidential information to record the date of receipt of the information and the Party or observer that submitted the information, and to track sign-out and return of document containing confidential information by authorized personnel.

20. Information designated as confidential shall be stored in a secure, locked location.

21. If confidential information must be transported to an external location, the Secretariat staff member concerned shall ensure that the document is under his or her supervision at all times, in a sealed envelope. The obligation of a Secretariat staff member to protect confidential information shall continue after completion of his or her services.

22. Secretariat staff members may be authorized to access confidential information on a need-to-know basis. All Secretariat staff members who need access to confidential information shall be given instructions on methods to protect the confidentiality of such information and shall be required to file with the Executive Secretary a declaration of non-disclosure. Secretariat staff members who are authorized to access confidential information shall ensure that the documents containing such information are never left unattended in an empty office.

23. Information designated as confidential shall not be distributed or disclosed to non-authorized individuals or organizations and shall not be distributed beyond the Secretariat’s control.

24. Upon finalization of procedures under Article 8 of the Convention, and subject to any agreement reached between the Secretariat and the Party or observer submitting the information, the Secretariat shall return any confidential information to the Party or observer that submitted information or, if it wishes so, destroy the information.

25. Any internal documentation developed that contains information designated as confidential shall also be considered confidential and shall be handled in accordance with this code.

26. The Secretariat shall make publicly available information on the requirements set out in this code to protect confidential information.

Access to confidential information

27. Members of the Committee shall be able to access confidential information, if they so request. Members may elect not to receive any confidential information.

28. Members may review confidential information either collectively at a closed session of the Committee, or individually at the offices of the Secretariat, under the supervision of the Secretariat.

29. Should the Party or observer submitting confidential information agree to make a hard copy of such information available to members upon request by mail or other appropriate means away from the Secretariat during the period between meetings of the Committee, the Secretariat shall arrange to send a copy of the information to members in a manner that protects its confidential nature. Members who have so received such information shall ensure that the information is protected in accordance with the standard for protecting the confidentiality of such information as set out in this code or relevant legislation governing the protection of confidential information.

30. Confidential information shall not be sent to experts who are not members of the Committee for review.

Treatment of confidential information at meetings of the Committee

31. When the Committee at its meeting has to invoke confidential information, the meeting shall be held in closed session in accordance with the rules of procedure of the Conference of the Parties, applied *mutatis mutandis*. The Party or observer that submitted the information may be invited by the Committee to participate in the meeting.

32. Decisions, recommendations and reports of the Committee shall not contain any confidential information.

Review of the code

33. This code shall be reviewed on a regular basis by the Committee and the Conference of the Parties.

General provision

34. The provisions of this code are without prejudice to the obligations of members applicable to them under the relevant legislation in their respective countries or the obligations of Secretariat staff members who are officials of the United Nations to observe the relevant United Nations regulations and rules and the standards of conduct contained therein.

Appendix

I. All members shall complete, sign and file with the Chair of the Committee the following

DECLARATION OF NON-DISCLOSURE

In accordance with the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee, I agree to the following:

1. I acknowledge having received a copy of the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee.
2. I acknowledge having read and understood the code.
3. I agree to be bound by, and to adhere to, the provisions of the code and, accordingly, without limitation, to treat confidentially all confidential information that I may view in implementing my functions as a member of the Persistent Organic Pollutants Review Committee.
4. It is understood that the present declaration is without prejudice to any applicable national laws and regulations.

Name:

Executed on this _____ day of _____, 20.. .

Signature: _____

II. All relevant Secretariat staff members shall sign, complete and file with the Executive Secretary the following

DECLARATION OF NON-DISCLOSURE

In accordance with the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee, I agree to the following:

1. I acknowledge having received a copy of the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee.
2. I acknowledge having read and understood the code.
3. I agree to be bound by, and to adhere to, the provisions of the code and, accordingly, without limitation, to treat confidentially all confidential information that I may view in providing secretariat support to the work of the Persistent Organic Pollutants Review Committee.
4. It is understood that the present declaration is without prejudice to any regulations, rules and codes of conduct of the United Nations.

Name:

Executed on this _____ day of _____, 20.. .

Signature: _____

