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File OF-EP-Gen-EPGen 10 01
21 March 2023

Companies regulated under the *Oil and Gas Operations Act*, rights holders, government departments and agencies, Indigenous governments, and interested parties.

Public Access to Information Guidelines and Interpretation Notes under the Northwest Territories' *Oil and Gas Operations Act*

I am pleased to inform you that the Canada Energy Regulator (CER) has released draft *Public Access to Information Guidelines and Interpretation Notes* (Guidelines) and is offering the public an opportunity to comment on them. The CER is doing this in its capacity as the Regulator of oil and gas operations in the onshore part of the Inuvialuit Settlement Region in the Northwest Territories under the Northwest Territories' *Oil and Gas Operations Act* (OGOA).

The guidelines address the changes to the OGOA resulting from the amendments to that Act which came into effect on 23 July 2020. Specifically, the Guidelines address the new provisions for the public availability of information listed in section 22 of the OGOA. They are also intended to enhance the transparency of the OGOA process for all stakeholders. If approved, the Guidelines will apply to information provided to the CER under the OGOA and its regulations.

The draft Guidelines can be found on the CER's website: <https://www.cer-rec.gc.ca/en/about/how-we-regulate/guidance/ogoa/draft-public-access-information-guidelines-interpretation-notes-ogoa/index.html>. Comments on the draft Guidelines may be submitted to the Secretary of the Commission at secretary@cer-rec.gc.ca and will be accepted until 12 May 2023.

If you have any questions please contact Zoe Pfeiffer, Director – Energy Adjudication at zoe.pfeiffer@cer-rec.gc.ca.

Best regards,

Original signed by

Gitane De Silva
Chief Executive Office

**PUBLIC ACCESS TO INFORMATION
GUIDELINES AND
INTERPRETATION NOTES**
under the
Oil and Gas Operations Act

Canada Energy Regulator

DRAFT: 21 March 2023

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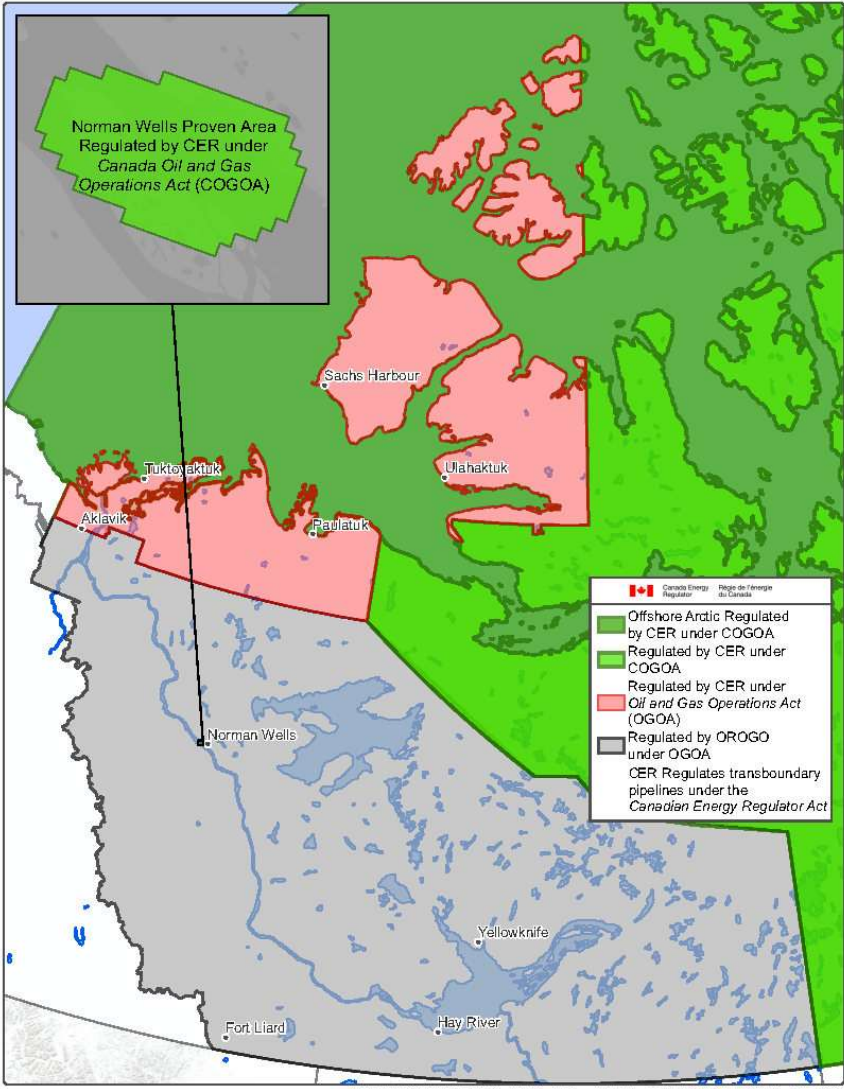
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1. INTRODUCTION

Purpose	The <i>Public Access to Information Guidelines and Interpretation Notes</i> (Guidelines) provide guidance on whether and how information submitted to the Canada Energy Regulator (CER) for the purpose of the <i>Oil and Gas Operations Act</i> , SNWT 2014, c 14 (OGOA) and its regulations is made publicly available.
Legislative Requirements	Section 22 of OGOA describes the overall approach to making information submitted to the CER available to the public and explains circumstances under which information may be kept confidential: <ul style="list-style-type: none">• Because it meets certain criteria; or• For a certain period of time.
Plain Language	These Guidelines have been written in plain language in order to make them accessible to as many readers as possible.
Legislation is Paramount	Where a conflict exists between the Guidelines and OGOA, OGOA is paramount.
Objectives	The objectives of the Guidelines are to: <ul style="list-style-type: none">• Describe how information provided to the CER is handled resulting from the amendments to OGOA which came into effect on 23 July 2020;• Provide information on the process for requesting that information provided to the CER be kept confidential;• Enhance certainty and predictability in regulatory decisions; and• Promote accessibility and transparency in oil and gas regulation.
Authority	These Guidelines are issued by the CER under section 18 of the OGOA.
Regulator's Discretion	Application of these Guidelines is subject to the CER's discretion under OGOA.

Jurisdiction



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The Guidelines are organized as follows:

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2. MAKING INFORMATION PUBLIC

Contents	<p>This section describes how the CER will make information public. It contains information on:</p> <ul style="list-style-type: none">• Information provided to the CER;• Information produced by the CER;• Location of publicly available information;• Time periods during which the following types of information will be made public:<ul style="list-style-type: none">○ Applications;○ Active operations;○ Drilling results;○ Geophysical or geological work; and○ Other research.
Objective	<p>Persons providing information to the CER and members of the public interested in that information understand what will be made public and when.</p>
Requirements	<p>Subsection 22(2) of OGOA states that the CER will make information provided to it public, unless the CER determines the information meets the specific criteria to be kept confidential.</p> <p>Subsection 22(9) of OGOA lists information that must be made public and when.</p>
Information Provided to the Regulator	<p>Subsection 22(2) of OGOA applies to any information provided to the CER in relation to a requirement of OGOA or of its regulations.</p> <p>Section 3 of these Guidelines explains the process for requesting that the CER keep information provided to it confidential.</p>
Information Produced by the Regulator	<p>The CER is committed to transparency and accessibility in its operations. Information produced by the CER for the purposes of OGOA and its regulations is publicly available, except when it contains information that has been determined to be confidential by the CER or that is not disclosed under the <i>Access to Information Act</i> and <i>Privacy Act</i> (see Section 7 of these Guidelines).</p> <p>The CER may redact information produced by the CER in order to allow for greater transparency while respecting the confidentiality of</p>

information due to the CER's decision or the *Access to Information Act* and *Privacy Act*.

Location of Publicly Available Information

Publicly available information is:

- On the CER's public registry;
- Elsewhere on the CER's website [CER – View north and offshore data and well history \(cer-rec.gc.ca\)](http://cer-rec.gc.ca); or
- Available through the Frontier Information Office within the CER Library by phone at (403) 292-4800 or 1 (800) 899-1265 or by e-mail Library@CER-REC.gc.ca.

Applications

Non-confidential information associated with applications for Operations Authorizations, Well Approvals and Operating Licences is available as follows:

Type of Information	Available
Applications	<p>Within 5 days after the application is deemed complete</p> <p>Including Safety Plan, Environmental Protection Plan, and Contingency Plan required as part of an OGOA paragraph 10(1)(b) authorization application, and described in sections 6, 8, and 9 of the <i>Oil and Gas Drilling and Production Regulations</i></p>
Information requests and responses	<p>Within 5 days after the request is issued or response is received</p>
Decisions	<p>Within 5 days after the decision is issued</p>

**Active
Operations**

Non-confidential information associated with active operations is available as follows:

Type of Information	Available
Contingency plans (Emergency Response Plans)	As amended from time to time after the initial approval, within 5 days after it is received.
Information on diving work, weather observation, the status of operations or development of/production from a pool or field	Within 5 days after the information is received
Reports of accidents, incidents or petroleum spills	High level incident data posted monthly.
Hydraulic fracturing fluid information	30 days after the well was completed using hydraulic fracturing

Active Operations – other submissions under the *Oil and Gas Drilling and Production Regulations*

Non-confidential information associated with active operations is available as follows:

Type of Information	Available
Safety Plan	As amended from time to time after the initial approval, within 5 days after it is received.
Environmental Protection Plan	As amended from time to time after the initial approval, within 5 days after it is received.

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**Active
Operations –
other reports**

Non-confidential information associated with active operations is available as follows:

Type of Information	Available
Operator well inspection reports	Within 5 days after the information is received
Compliance verification activity reports (Field Inspection and Emergency Response Exercise reports only)	Typically 60 days after the completion of the compliance verification activity / 30 days after CVA report is finalized by CER inspector.
Notices of Contamination or associated documents (e.g., annual updates, Remedial Action Plans, and Closure Reports)	Within 5 days after the information is received.

Definitions

An **incident** is:

(a) an event that causes:

- (i) a lost or restricted workday injury,
- (ii) death,
- (iii) fire or explosion,
- (iv) a loss of containment of any fluid from a well,
- (v) an imminent threat to the safety of a person, installation or support craft or
- (vi) pollution

(b) an event that results in missing person, or

(c) an event that causes:

- (i) the impairment of any structure, facility, equipment or system critical to the safety of persons, an installation or support craft, or
- (ii) the impairment of any structure, facility, equipment or system critical to environmental protection.

A **near miss** is an event that would likely cause an event set out in paragraph (a) of the definition “incident” but does not, due to particular circumstances.

Pollution is the introduction into the natural environment of a substance or form of energy outside the authorized limits, including spills.

**Drilling
Results**

Non-confidential information resulting directly from the drilling of a well is available as follows:

Type of Information	Available
Well history reports, logs and other information received from drilling an exploratory well	Two years after the well was completed, suspended or abandoned.
Well history reports, logs and other information received from drilling a delineation well	The later of: <ul style="list-style-type: none">• Two years after the associated exploratory well was completed, suspended or abandoned or• 90 days after the delineation well was completed, suspended or abandoned.
Well history reports, logs and other information received from drilling a development well	The later of: <ul style="list-style-type: none">• Two years after the associated exploratory well was completed, suspended or abandoned or• 60 days after the development well was completed, suspended or abandoned.

Definitions An **exploratory well** is a well drilled on a geological feature on which a significant discovery has not been made.

A **delineation well** is a well drilled in order to determine the commercial value of the accumulation penetrated by an existing well.

A **development well** is a well drilled into the same accumulation as an existing well:

- For the purpose of production or observation; or
- For the injection or disposal of fluid into or from the accumulation.

Geophysical or Geological Work Non-confidential information resulting from geophysical or geological work is available as follows:

Type of Information	Available
Information from exclusive geological or geophysical work	Five years after the work is completed.
Information from non-exclusive geological or geophysical work	Fifteen years after the work is completed.

Definitions **Exclusive** geological or geophysical work is conducted to gather data for use by a particular company.

Non-exclusive geological or geophysical work is conducted to gather data for the purpose of sale to the public.

**Other
Research**

Non-confidential information resulting from other research is available as follows:

Type of Information	Available
Environmental study	If the information relates to a well that has been drilled, after 90 days. Otherwise, two years after the study has been completed.
Information from engineering research, feasibility studies, experimental projects and geotechnical work	If the information relates to a well that has been drilled, see the requirements for exploratory, delineation and development wells. Otherwise, the earlier of: <ul style="list-style-type: none">• Five years after the research, study or project has been completed or• When the land reverts to Territorial reserve lands.

3. APPLYING FOR CONFIDENTIALITY FOR INFORMATION PROVIDED TO THE CER

Contents	<p>This section describes how to apply for confidentiality over information that is provided to the CER pursuant to OGOA or the regulations. It contains information on:</p> <ul style="list-style-type: none">• Objective;• Requirements;• Criteria for requesting that information be deemed confidential;• Confidentiality of Indigenous Knowledge• Privacy of personal information;• The confidentiality request process;• Withdrawing information; and• Challenges to a Decision Denying a Confidentiality Request.
Objective	<p>The process to apply for confidentiality is clear and the public is aware of decisions to consider information confidential.</p>
Requirements	<p>Subsection 22(2) of OGOA states that the Regulator will make information available to the public, unless it meets certain specific criteria.</p>
Criteria for Requesting Confidentiality	<p>The CER may consider information to be confidential if it contains financial, commercial, scientific, or technical information; and</p> <ul style="list-style-type: none">• the information has been consistently treated as confidential by the provider;• the person's interest in confidentiality outweighs the public interest in making the information public; and• the information is not publicly available.
Confidentiality of Indigenous Knowledge	<p>Indigenous knowledge provided in confidence to the CER is confidential as detailed in section 5 below. No request for confidentiality is required.</p>
Privacy of Personal Information	<p>The CER expects a person filing documents on its public registry to comply with the requirements of applicable privacy legislation.</p>
Confidentiality Request Process	<p>Any confidentiality requests should generally be for specific information within a document, rather than for the entire document, The justification for the request should be specific to each piece of</p>

information for which confidentiality is sought and the applicable provision ought to be included in the corresponding margin.

The process for requesting confidentiality is:

1. File with the CER on its public registry a cover letter requesting confidentiality and describing:
 - The criteria the information meets (see Criteria for Requesting Confidentiality, above); and
 - The reasons for the request.
2. File with the CER on its public registry a redacted version of the information.
3. Separately file with the CER an unredacted version of the information for which confidentiality is requested to Secretary@cer-rec.gc.ca. In the subject line of the cover email and in the document title and electronic file name, clearly indicate that the information is confidential.
4. The CER will decide whether the information is confidential and will provide written reasons for its decision to the information provider. The CER will also post the decision on its public registry.
5. If the CER decides to treat the information as confidential, then the CER will not require the provider to file the information on its public registry and the information will not be made publicly available.
6. If the CER decides not to treat the information as confidential, then the CER will specify in its written decision a date by which the provider has the choice to either:
 - accept that the information will be made public;
 - or
 - withdraw the information from the process.

Withdrawing Information

If the provider opts to withdraw the information for which confidentiality was denied, the provider must so notify the CER and should give instructions to the CER to return all copies of the information to the provider or to destroy them or delete any digital file.

If the provider decides to withdraw the information, rather than have it made publicly available on the CER's public registry, then the CER cannot consider that information when making a decision on the application or other submission by the provider. Deciding not to file the information on the CER's public registry may result in serious consequences. For example, it may result in:

- An application being considered incomplete and not being processed; or

- The failure to comply with a reporting requirement under the OGOA, which is an offense under OGOA.

**Challenges to
a Decision
Denying a
Confidentiality
Request**

The OGOA does not include any explicit provisions that allow for an appeal or a review of a CER decision on a confidentiality request under section 22 of the OGOA.

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4. APPLYING FOR CONFIDENTIALITY FOR INFORMATION PROVIDED IN A HEARING OR AN INQUIRY

Contents	<p>This section describes how to apply for confidentiality over information provided in the course of a public hearing or an inquiry. It contains information on:</p> <ul style="list-style-type: none">• Objective;• Requirements and criteria for requesting confidentiality;• Confidentiality of Indigenous knowledge;• The confidentiality request process during a public hearing or inquiry; and• Requesting Access to Confidential Information.
Objective	<p>The process to apply for confidentiality is clear and the public is aware of decisions to consider information confidential.</p>
Requirements and criteria for requesting confidentiality	<p>Section 19 of the OGOA authorizes the CER to inquire into, hear, and determine matters under the OGOA and the regulations, while section 19.1 authorizes the CER to hold public hearings.</p> <p>Subsection 22(3) of the OGOA authorizes the CER to ensure the confidentiality of information likely to be disclosed at a hearing or an inquiry, if satisfied that:</p> <ul style="list-style-type: none">• disclosure of the information could reasonably be expected to result in material loss or gain to a person directly affected by the hearing or inquiry, or to prejudice the person's competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure; or• the information is financial, commercial, scientific, or technical in nature that is confidential information supplied to the CER and<ul style="list-style-type: none">○ the information has been consistently treated as confidential by a person directly affected by the hearing or inquiry,○ the person's interest in confidentiality outweighs the public interest in making its disclosure, and○ the information is not publicly available. <p>Subsection 22(4) of OGOA authorizes the CER to ensure the confidentiality of information likely to be disclosed at a hearing or an inquiry, if the CER is satisfied that:</p>

- there is a real and substantial risk that making the disclosure of the information will impair the security of infrastructure, and
- the risk above outweighs the public interest in its disclosure.

Confidentiality of Indigenous Knowledge

Indigenous knowledge provided in confidence to the CER during a hearing or an inquiry is confidential as detailed in section 5 below. No request for confidentiality is required.

Confidentiality Request Process

Any confidentiality requests should generally be for specific information within a document, rather than for the entire document. The justification for the request should be specific to each piece of information for which confidentiality is sought and the applicable provision ought to be included in the corresponding margin.

Requests for confidentiality under subsection 22(3) or 22(4) of OGOA must be made using the following process:

1. File with the CER on its public registry a cover letter requesting confidentiality and describing:
 - The criteria the information meets (see Requirements and Criteria for Requesting Confidentiality, above); and
 - The reasons for the request.
2. File with the CER on its public registry a redacted version of the information.
3. Separately file with the CER an unredacted version of the information for which confidentiality is requested to Secretary@cer-rec.gc.ca. In the subject line of the cover email and in the document title and electronic file name, clearly indicate that the information is confidential.
4. The CER will decide whether the information is confidential and will provide written reasons for its decision to the information provider. The CER will also post the decision on its public registry.
5. If the CER decides to treat the information as confidential, then the CER will not require the provider to file the information on its public registry and the information will not be made publically available.
6. If the CER decides not to treat the information as confidential, then the CER will specify in its written decision a date by which the provider has the choice to either:
 - accept that the information will be made public;
 - or

- withdraw the information from the process (see section 3 above on “Withdrawing Information”).

**Requesting
Access to
Confidential
Information**

Parties to a Hearing or Inquiry may wish to get access to the Confidential Information for reasons of procedural fairness. Parties can request access either by filing a written request with the CER or verbally making such a request during the Hearing or Inquiry. Such request will be decided upon on a case-by-case basis.

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5. CONFIDENTIALITY OF INDIGENOUS KNOWLEDGE

Contents This section contains information on the confidentiality of Indigenous knowledge provided to the CER.

Confidentiality of Indigenous Knowledge The CER will protect the confidentiality of Indigenous knowledge, as defined in the *Canadian Energy Regulator Act*, if provided in confidence to the CER. Indigenous knowledge provided in confidence to the CER does not need to meet the requirements described in section 22 of OGOA. In situations where Indigenous knowledge is provided in confidence, the CER must not knowingly, or be permitted to, disclose such knowledge without written consent of the provider. There may be exceptions to this and the Indigenous knowledge may be disclosed if

- a) it is publicly available; or
- b) the disclosure is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings.

Prior to disclosing any Indigenous knowledge under b) above, the CER will consult the person or entity who provided the Indigenous knowledge and the person or entity to whom it is proposed to be disclosed about the scope of any proposed disclosure and potential conditions that may be imposed with respect to disclosure.

6. PERMITTED SHARING OF CONFIDENTIAL INFORMATION

Contents This section contains information on the situations where confidential information, including Indigenous knowledge provided in confidence, may be shared by the CER.

Objective Providers of confidential information are aware of the situations where that information may be shared with others without their consent.

Requirements Subsections 22(5) to (8) and (10) of OGOA describe the situations in which the CER may share information it agreed was confidential under subsections 22(2) to (4).

Sharing Confidential Information The CER may share confidential information with specific organizations for specific purposes, as shown in the following table:

With	Purpose
Unspecified	For the administration or enforcement of OGOA and its regulations.
Unspecified	For legal proceedings in relation to the administration or enforcement of OGOA and its regulations.
The Government of Canada, a province or territory, or any organization representing any Indigenous people of Canada	To fulfill an agreement between the Government of the Northwest Territories and that government or organization relating to resource management and revenue sharing associated with the exploration for or production of petroleum. The receiver of the information must keep it confidential.
The Government of Canada, a province or territory, or a foreign government (or their agencies)	For the purpose of Northwest Territories, federal, provincial, territorial or foreign law that deals primarily with petroleum-related work or activity, including the management of the resource. The receiver of the information must keep it confidential and must comply with any

	<p>conditions established for sharing the information.</p> <p>If the information is being shared with a foreign government, the Minister of Industry, Tourism and Investment must consent to sharing the information in writing.</p>
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7. INFORMATION FILED BEFORE THE EFFECTIVE DATE

- Contents** This section describes how information provided to the CER before 22 July 2020 (the effective date) will be managed.
- Objectives** Information provided to the CER before the effective date is managed in a way that reflects the understanding of its confidentiality at the time.
- Requirements** Subsection 22(13) of OGOA states that information provided to the CER before the effective date and required to be made available to the public under subsection 22(9) of OGOA will:
- Remain public if it has already been made publicly available; or
 - Will be made public after the time period set out in section 22(9) (see section 2 of these Guidelines for more information on the time periods).
- Other Information** Information provided to the CER before the effective date and not covered under section 22(9) of OGOA will remain confidential.

8. ACCESS TO INFORMATION ACT AND PRIVACY ACT

Contents	This section describes how the <i>Access to Information Act</i> and <i>Privacy Act</i> relate to OGOA.
Application	The <i>Access to Information Act</i> and <i>Privacy Act</i> apply to information provided to the CER and produced by the CER under OGOA.
Conflict Between Privacy Act and OGOA	If there is a conflict between the <i>Access to Information Act</i> and/or the <i>Privacy Act</i> and the disclosure requirements for information provided to the CER for the purpose of OGOA or its regulations, the section 22 OGOA disclosure requirements prevail.
Where to Find Access to Information Act and Privacy Act	The <i>Access to Information Act</i> can be found at: https://laws-lois.justice.gc.ca/eng/acts/A-1/FullText.html . The <i>Privacy Act</i> can be found at: https://laws-lois.justice.gc.ca/ENG/ACTS/P-21/index.html .

9. REGULATOR'S APPROVAL

These *Public Access to Information Guidelines and Interpretation Notes* are issued under section 18 of the *Oil and Gas Operations Act* effective 21 March 2023.

Gitane De Silva
Chief Executive Officer
Canada Energy Regulator

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