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# Confidentiality and the GIA

## Secretariat Guidance Version 2 – updated October 2015

This guidance replaces in full the Secretariat Guidance paper *Confidentiality and the GIA*, dated July 2014.

### Purpose

This guidance paper outlines what is required by individuals and organisations involved in GIA for maintaining confidentiality of information. The goal of this guidance and the GIA Confidentiality Deed is to ensure that confidential information exchanged through the course of carrying out activities under the GIA Deed is managed appropriately. The requirement to maintain confidentiality is not intended to restrict any Signatory to this GIA Confidentiality Deed conducting normal day-to-day activities. Not all information you will access through GIA will be confidential – indeed, only a relatively small component of the information would be considered confidential.

### Who needs to sign the GIA Confidentiality Deed?

You need to sign the GIA Confidentiality Deed if you fall into one of the following categories:

- (1) You represent a GIA Deed Signatory (including the Ministry for Primary Industries' authorised representative (currently Director, Intelligence, Planning & Coordination)) or a primary industry organisation and are involved in the development or implementation of the GIA Deed through, but not necessarily limited to:
  - Participation in the (Transitional) Deed Governance Group
  - Development of Operational Agreements (OA)
  - Involvement in joint working groups
  - Involvement in biosecurity responses
- (2) You are engaged or consulted by a representative of an organisation (as specified in category 1 above) on GIA Deed-related activities. For example, you may need to discuss financial or technical matters relevant to response decision-making or cost sharing, or agreement to sign an OA.
- (3) (Transitional) Deed Governance Group observers or advisors.
- (4) GIA Secretariat staff
- (5) You have signed an earlier version of the GIA Confidentiality Deed.

### Action required

You should complete the GIA Confidentiality Deed as soon as you have been selected as a representative of your organisation and/or before you participate in GIA Deed-related activities. Your organisation will need to put processes in place to ensure staff and Board members:

- Are aware of their responsibilities
- Know and understand the organisation's expectations for managing confidential information
- Are familiar with and comply with systems for physically managing confidential information.

Training may be needed to ensure compliance with confidentiality requirements.

Your organisation must keep the original signed Confidentiality Deeds and provide copies to the GIA Secretariat. The GIA Secretariat will save the copies for its own records and maintain a

register of those who have signed the GIA Confidentiality Deed. The register will be available to GIA Signatories.

The GIA Secretariat will provide a copy of the signed Confidentiality Deeds to MPI if requested to facilitate rapid notification in response situations.

### **What is a Confidentiality Deed?**

The Confidentiality Deed supports open and honest communication between GIA Signatories and reduces the risk that information will be inappropriately disclosed to, and potentially used by, third parties. As a formal deed, it is intended to be legally enforceable.

The Confidentiality Deed outlines the requirements of the individual signing it, including guidance on what form confidential information may take, as well as the scope and limits of the commitment made by the signee to manage information that is of a confidential nature, including its storage and disclosure.

### **What am I committing to by signing the Confidentiality Deed?**

By signing the GIA Confidentiality Deed, you make a legal commitment to maintain the confidentiality of confidential information that you access through GIA Deed-related activities. You agree to disclose confidential information only in accordance with the terms of the Confidentiality Deed.

This means you will keep confidential information secure, and not disclose it to anyone else without authority. Where such authority comes from will vary depending on who 'owns' the information. For example the chair of the Deed Governance Group for governance group matters, or the chair of the Response Strategic Leadership for information related to a biosecurity response.

### **Won't this stop me being able to do my job?**

As noted above, only a relatively small component of the information received through involvement with GIA would be considered confidential.

A key principle of the GIA partnership is transparency amongst Signatories, and open sharing of information. GIA Signatories are expected to share information with their respective stakeholder groups in order to promote GIA outcomes. It is only certain information that is considered confidential and so requires extra caution.

Additionally, there is not an absolute prohibition on the disclosure of confidential information. Rather, if confidential information needs to be disclosed to carry out any particular task, appropriate authorisation can be obtained before doing so. The process for obtaining this authorisation will vary based on the circumstances, however as a rule, it will mean obtaining the written consent (on paper or email) from the appropriate authority before any disclosure occurs.

### **Why do I need to sign the Confidentiality Deed?**

You will have access to confidential information from other organisations, including other industry organisations and the Ministry for Primary Industries. The Confidentiality Deed provides a common framework for managing confidential information under GIA, meaning everyone involved in GIA has a shared understanding of how confidential information will be managed. The release of confidential information to the wrong party, or at the wrong time, could damage the commercial position of an industry or New Zealand's trade position with its international partners. If you wilfully breach your obligations in this deed, potentially both you and the organisation you represent could be exposed to legal proceedings for any harm caused by your actions.

## **How will I know what is confidential?**

Confidential information must be identified as such by its owner before it is disclosed, with written material marked as such. However, it is your responsibility to know the status of information before disclosing it.

There is no one definition that covers all confidential information – but as a guide, it may include information that is of a private and/or commercially sensitive nature, such as:

- Commercial in-confidence information relating to a third party
- Commercial information detailing the finances of a company or individual; or the charging for particular services
- Sensitive information relating to Government policies or financial interests
- Information which attracts legal professional privilege
- Internal or draft working documents
- Information relating to national security, international relations, or trade
- Personal information about identifiable individuals

In general, information is not confidential when it:

- Is in the public domain
- Becomes part of the public domain following its authorised disclosure or release

## **How will Deed Signatories manage confidentiality?**

Participants in GIA Deed-related activities should agree what is confidential and how they will collectively manage it. The operating procedures for GIA Deed-related committees may provide specific guidance on managing confidential information where committee members agree it is needed. In general, this means:

- Not disclosing confidential information to unauthorised people, or without authorisation to do so
- Keeping confidential information, including documents and electronic correspondence, secure from unauthorised access
- Checking the status of information before disclosing it
- Disposing of documents and information securely

## **What happens if I don't sign?**

If you are uncomfortable signing the Confidentiality Deed, you should discuss your concerns with the GIA Secretariat.

In simple terms, if you cannot commit to the requisite confidentiality you will not be able to participate in all GIA activities. For example, in order to be involved in the Deed Governance Group or Response Strategic Leadership, you will need to commit to maintain appropriate confidentiality by signing the Confidentiality Deed.

## **Who can witness my signature?**

A witness must not be a party to the Confidentiality Deed, so should not be any representative of your organisation that is actively involved in GIA related matters. A suitable witness is preferably a completely independent person, however another employee of your organisation who is completely removed from GIA matters could also witness. Family members are not suitable as witnesses.

## **What if I have already signed the previous version of the GIA Confidentiality Deed?**

All Signatory representatives will sign the updated version of the Confidentiality Deed, even if they have signed the previous version. The previous version still applies to information exchanged for GIA from the date the previous version was signed till the date the updated version is signed.

## Background

The Government Industry Agreement Deed (**GIA Deed**) for biosecurity readiness and response, dated 20 May 2014, between the Ministry for Primary Industries (**MPI**) and industry organisations listed in Schedule 1 of the GIA Deed, establishes the basis for government and primary industries jointly sharing decisions and costs to prepare for and effectively respond to biosecurity risks.

In order to implement the GIA Deed, the parties and potential industry parties to the GIA Deed will exchange Confidential Information with me acting in my role (and where relevant, representing the organisation) stated in clause 12.

Not all the information exchanged will be confidential, and this Deed does not restrict any of its Signatories from carrying out legitimate duties required of their employment. This Deed is designed to ensure that any information that is confidential is managed appropriately and that all its Signatories can have assurance their confidential information will be managed with due care. It also provides an avenue for recourse should confidentiality be breached.

## Definitions

In this Deed:

**Appropriate Authority** means the party that provided the Confidential Information, or the person or governance body with decision rights over that information in carrying out the Purpose.

**Authorised Recipient** is either someone who has signed the GIA Confidentiality Deed who requires the information for the Purpose, or someone that an Appropriate Authority has authorised to receive Confidential Information for the Purpose, with any appropriate conditions on the use of the Confidential Information.

**Confidential Information** means confidential, non-public, or commercially sensitive information, provided to me directly from my participation in GIA Deed activities (including for example, activities relating to Operational Agreements, early notification of unwanted organism investigations, Responses and Engagement across the biosecurity system activities), **and identified as confidential by the provider of that information**, regardless of how the information is stored or what format it is in, and whether or not the information is owned by a third party.

**Purpose** means working to deliver GIA Deed and Biosecurity Act outcomes in accordance with the obligations under the GIA Deed and in the Biosecurity Act 1993:

**Signatories** means any person who has signed a GIA Confidentiality Deed.

## General Provisions

1. **Effective Date of Deed and Term.** This Deed, effective as of the date I sign it, continues indefinitely.
2. **Previous Confidentiality Deed.** If I have signed a previous version of the GIA Confidentiality Deed, the previous version remains in force and covers the period of time from the date the previous version was signed to the date this agreement is signed.
3. **No disclosure obligation.** This Deed does not create any obligation for Signatories to provide any information to me or for the Signatories to enter into any further contract with each other.
4. **Confidentiality.** Except as otherwise agreed by an Appropriate Authority I will:
  - (a) not disclose the Confidential Information to anyone other than an Authorised Recipient;
  - (b) not use the Confidential Information except for the Purpose;
  - (c) not use the Confidential Information to gain any personal advantage, or for the benefit of any person or organisation other than in the carrying out of the Purpose.

- (d) subject to clause 9, store and keep all Confidential Information in appropriately secure custody;
- (e) without limiting the above obligations, exercise the same standard of care in the treatment and protection of the Confidential Information as I exercise or ought reasonably exercise for my organisation's own confidential information of a similar nature and sensitivity; and
- (f) on discovery of any breach of this Deed, promptly notify the GIA Secretariat of the breach and co-operate with Signatories in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorised use or disclosure.
- (g) determine the confidentiality status of information before making any disclosure.

5. **Exclusions.** My obligations under this Deed do not apply to the extent that the Confidential Information:

- (a) is not intended to be confidential, noting the obligation on me to determine this in clause 4(g); or
- (b) is required to be disclosed by law, court order, regulatory authority, Ministerial request, or Parliamentary Rules and Conventions having jurisdiction over me, provided I have:
  - (i) given the Appropriate Authority as much written notice as possible and discussed and considered their views in relation to the intended disclosure, prior to making the disclosure;
  - (ii) given the Appropriate Authority full particulars of the request or requirement for disclosure, to the extent the I am permitted to do so and to the extent that the timeframes applicable to the request or requirement for disclosure allow; and
  - (iii) if the proposed disclosure is because of the Official Information Act, discussed with the Appropriate Authority to whom the request might have been transferred, the decision not to transfer the request in accordance with that Act; or
- (c) is already public knowledge (otherwise than as a result of a breach of this confidentiality Deed); or
- (d) has been independently developed or has been independently supplied to me or is independently known by me, and is not information only received by me from Signatories for the Purpose.

6. **Proprietary Interest.** Under this Deed I acquire no rights in other Signatories' Confidential Information, except the limited rights necessary to carry out the Purpose.

7. **Warranty.** I warrant that as a Signatory, I have the right to disclose my Confidential Information under this Deed. No other warranties are made in relation to the Confidential Information.

8. **Official Information.** Regardless of any other provision of this Deed, I acknowledge that the Confidential Information may be official information under the Official Information Act 1982 and, in accordance with that Act, such information may be released to the public.

9. **Records.** I will take all reasonable steps to ensure that only one copy of Confidential Information is kept for legal, regulatory and record keeping purposes. It is acknowledged that the same Confidential Information may be held in more than one format.

10. **Destruction of documents.** Subject to clause 8, at the request of the Appropriate Authority I will promptly and securely destroy, or return, all copies (including electronic) of the Confidential Information in my possession.

11. **Miscellaneous.**

- a) I acknowledge that any breach of this Deed may result in harm, loss or damage for which monetary compensation may not be an adequate remedy and that Signatories are entitled to specific performance and injunctive relief in addition to all other remedies at law or in equity.
- b) I will not make public announcements about Confidential Information without an Appropriate Authority's agreement.
- c) It is acknowledged that disclosure of Confidential Information may sometimes be necessary to meet my individual employment agreement obligations. In such circumstances disclosure of Confidential Information is subject to the approval of the Appropriate Authority.
- d) This Deed may not be amended except in writing signed by me.
- e) This Deed does not create any agency or joint venture relationship.
- f) This Deed may not be assigned.
- g) No failure, delay or indulgence on the part of a party in exercising any right under this Deed will constitute a waiver of such right. All waivers must be in writing by the party giving it.
- h) If any provision of this Deed is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- i) This Deed and its formation will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- j) For the purposes of the Contracts (Privity) Act 1982, this Deed is for the benefit of and is intended to be enforceable by the Signatories as well as parties to the GIA Deed..

12. **Execution. This is executed as a Deed by:**

\_\_\_\_\_

Signature

Full Name (printed):

Title/Position:

Organisation:

Date:

**In the presence of:**

\_\_\_\_\_

Witness signature

\_\_\_\_\_

Witness name (printed)

\_\_\_\_\_

Occupation

\_\_\_\_\_

Location