

## 980 CMR: ENERGY FACILITIES SITING BOARD

### 980 CMR 4.00: FREEDOM OF INFORMATION; PROTECTION OF TRADE SECRETS

#### Section

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#### 4.01: General

(1) Purpose. The purpose of 980 CMR 4.00 is to provide for free public access to all records of the Council with certain exceptions. Exceptions shall be construed strictly and narrowly. The purpose of 980 CMR 4.00 is also to provide protection for certain trade secrets, where such protection is both appropriate and provided for by law.

(2) Scope. 980 CMR 4.00 shall apply to all records of the Council including all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any member of the Council in her or his official capacity or by any employee of the Council.

(3) Statutory Authority. 980 CMR 4.00 is promulgated pursuant to M.G.L. c. 4, § 7; c. 66, § 10; c. 164, § 69H; and c. 164, § 69L.

(4) Definitions. For purposes of 980 CMR 4.00, the definitions set forth in 980 CMR 2.03(3) apply, unless the context or subject matter requires a different interpretation.

(5) Application of 980 CMR 2.00. 980 CMR 2.00 shall apply to 980 CMR 4.00 except to the extent that 980 CMR 2.00 and 4.00 are in conflict. In the event of a conflict, 980 CMR 4.00 shall prevail.

#### 4.02: Access to Information

(1) Right to Information. Any person shall be allowed access to any record of the Council unless the record is exempted by 980 CMR 4.03(1) or protected by 980 CMR 4.04(1).

#### (2) Procedure.

(a) A person seeking access to records of the Council should request access in person at the offices of the Council (100 Cambridge Street, Boston, Massachusetts 02202, Room 2109), by telephone (617-727-1136), or by first class mail.

(b) No charge shall be made for inspection of records.

(c) The Council may require a person desiring copies of any record to pay in advance the actual cost of preparing such copies.

(d) Any person not satisfied with the access provided pursuant to 980 CMR 4.02(2)(a) should prepare a written request for inspection or copy of a public record pursuant to M.G.L. c. 66, § 10. The request should be delivered in hand or mailed via first class mail, certified, return receipt requested, to the Chairman at the offices of the Council, Room 2109, 100 Cambridge Street, Boston, Massachusetts 02202.

(e) If the Chairman refuses or fails to comply with a request made pursuant to M.G.L. c. 66, § 10 within 20 days after receipt of the said request, the person requesting access may resort to the courts as set forth in said M.G.L. c. 66, § 10.

#### 4.03: Exempt Information

(1) General Principles. Records which are exempted by 980 CMR 4.03(2) shall not be made available to the public. Only that part of a record which comes within an exemption shall not be made available. Those parts of a record which are not exempt shall be made available through the procedures of 980 CMR 4.02(2) provided that the Council may require a person seeking access to information to pay the actual cost of separating exempt from non-exempt information.

4.03: continued

- (2) Exemptions. Records shall not be made available to the public if they are within any of the enumerated exemptions in the 26th clause of M.G.L. c. 4, § 7.

4.04: Methods or Processes Entitled to Protection

- (1) General. An applicant for a Certificate of Environmental Impact and Public Need or any other person may assert that any information obtained by or submitted to the Council in connection with an application for a Certificate relates to methods or processes entitled to protection as a trade secret.

The procedures of 980 CMR 4.04 shall also be available to any person in connection with any other type of proceeding before the Council, including forecast and supplement proceedings pursuant to 980 CMR 7.00 and proceedings relating to a Notice of Intention filed pursuant to 980 CMR 8.00. The procedures shall also be available for any information sought to be protected under any of the exemptions referred to in 980 CMR 4.03(2).

Any person or party submitting a document or record to the Council for any purpose other than for purposes of a determination as provided in this Part and seeking protection of the confidentiality of such document or record pursuant to this Part, must petition the Council as provided by 980 CMR 4.04(2) at least 30 days before submission. The requirement of the prior sentence shall not apply to information submitted pursuant to a request of the Council or of a party, provided that the person or party seeking protection of the document or record waives the right of withdrawal provided by 980 CMR 4.04(4).

- (2) Petition. Such applicant or person shall present a written petition to the Council. The petition shall:

- (a) Include a complete copy of all documents sought to be protected;
- (b) State the reasons why the Council should protect the information in such detail as shall enable the Council to reach a decision; and
- (c) Include a copy of all documents sought to be protected, edited to exclude only the precise information sought to be protected.

- (3) Decision. The Council shall render a decision on such a petition within 30 days after its receipt. The Council shall find that a document or a part thereof shall be protected if a majority of the Council so agree. If the Council so finds, it shall direct the Chairman not to disclose the said document or part thereof, except to Council members, the Council staff, parties determined pursuant to 980 CMR 1.05(2), and other governmental agencies concerned with matters raised by the relevant proceeding. The Council shall further direct the Chairman to require such persons and agencies not to disclose such information.

- (4) Temporary Protection; Withdrawal. Pending a decision on a petition pursuant to 980 CMR 4.04(2), the Council shall temporarily protect a document and treat it as if it were entitled to be kept completely confidential.

Any applicant for a Certificate may submit a document to the Council for the sole purpose of determining whether it is entitled to protection by so stating and petitioning at the time of submission. The applicant may then withdraw the document immediately after the Council's decision; in the event of withdrawal, the Council may not reveal the information in the document or consider it for any purpose.

If the Council finds that a document shall be protected and if the document is not withdrawn, the Council shall be bound by any subsequent judicial decision pursuant to M.G.L. c. 66, § 10, that the document must be made public.

4.05: Introduction of Confidential Information in Adjudicatory Proceedings

- (1) General Purpose. If any information is determined pursuant to 980 CMR 4.04 to consist of trade secrets or other matter entitled to protection or is exempt from public access for any other reason, it may be introduced into evidence in an adjudicatory proceeding by a party under the provisions of 980 CMR 4.05.

4.05: continued

(2) Procedures for Introduction of Confidential Information.

(a) The party seeking to introduce confidential information must first satisfy the Council that the information consists of trade secrets or other matters entitled to protection or is exempt from public access.

(b) Every party shall be entitled to hear or review confidential information and, as appropriate, to cross-examine witnesses, to object to the introduction of evidence, and to exercise all other rights available to a party.

(c) The Council shall take such measures and issue such orders as may be appropriate and necessary to protect the confidentiality of information and to preserve the rights of all parties. Such measures may include the exclusion of the public from portions of hearings and the separate and protected filing of portions of transcripts and items of evidence. Such orders may include orders that parties and their counsel not reveal confidential information to any other person.

(d) Any party may without prejudice to any rights elect not to hear or review confidential information.

REGULATORY AUTHORITY

980 CMR 4.00: M.G.L. chs. 4, 5, 7; c. 66, § 10; c. 164, §§ 69H and 69L.