

# OIE Policy on the Protection of Legitimate Confidentiality

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## Introduction

The World Organisation for Animal Health (OIE) is an intergovernmental organization committed to the promotion of animal health, animal welfare and animal production food safety world-wide. Its scientifically-based standards, guidelines and recommendations are used by governments as the basis for formulating national rules and regulations in these fields and also to ensure safe and humane trade in animals and safe trade in animal products.

One of the main features of the work of the OIE is its management of information. The OIE's World Animal Health Information System (WAHIS) and its associated online database (WAHID) provide a real time image of the animal health situation worldwide and in individual Member Countries.

In addition to WAHIS, the OIE manages a considerable amount of trade-related and technical and scientific information, some of which is sensitive and some of which is protected intellectual property. Access to such information invokes a responsibility to protect its confidentiality. Specific conditions exist in the OIE covering the protection of intellectual property in relation to the evaluation of diagnostic assays and other work of the Biological Standards Commission<sup>1</sup> as well as the use of PVS manuals by OIE accredited experts. Similarly, specific arrangements apply to manage information concerning the OIE official procedures and policy for Members wishing to apply for recognition of animal disease status<sup>2</sup>.

The protection of legitimate confidentiality must always be seen as an exception to the right to freedom of opinion and expression, which includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Universal Declaration of Human Rights, Articles 19 and 27). For this reason, the protection of legitimate confidentiality must be managed in a transparent manner while being treated as an exception to the general rule of transparency.

In general, the OIE maintains a transparent approach to information management but there are some circumstances which require the protection of confidential data and other information. OIE's policy and procedures for the management of legitimate confidentiality are given in the present document.

## What is "legitimate confidentiality"?

### General

As an intergovernmental organisation, the OIE respects the basic principles of openness and transparency but considers that exceptions apply to the legitimate confidentiality of information the disclosure of which would undermine the protection of:

- (a) the interest of its Member Countries as regards:
  - public security,
  - defence and military matters,

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<sup>1</sup> Standard Operating Procedures (SOP) for OIE Validation and Certification of Diagnostic Assays  
[http://www.oie.int/fileadmin/Home/eng/Our\\_scientific\\_expertise/docs/pdf/en\\_fichier\\_SOP.pdf](http://www.oie.int/fileadmin/Home/eng/Our_scientific_expertise/docs/pdf/en_fichier_SOP.pdf)

<sup>2</sup> Standard Operating Procedure (SOP) for the OIE Official Recognition of Disease Status  
[http://www.oie.int/fileadmin/Home/eng/Animal\\_Health\\_in\\_the\\_World/docs/pdf/Standard\\_Operating\\_Procedure\\_A.pdf](http://www.oie.int/fileadmin/Home/eng/Animal_Health_in_the_World/docs/pdf/Standard_Operating_Procedure_A.pdf)

- international relations,
  - trade relations,
  - the financial, monetary or economic policy
- (b) the privacy and the integrity of the individual, in particular with respect to the protection of personal data and personal opinion.

The OIE also respects the legitimate confidentiality of information the disclosure of which would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- legal proceedings and advice,
- the purpose of inspections, investigations, evaluations and audits<sup>3</sup>,

unless there is an overriding public interest in disclosure or the Member countries have agreed to release the corresponding reports.

As an intergovernmental body, the OIE also respects the legitimate confidentiality of certain decision-making processes, in particular by protecting information or opinions considered to be for its internal use in a matter where the disclosure of the information would seriously undermine the decision-making process. Such information may be disclosed if there is an overriding public interest in disclosure.

Also, a Member Country may request the OIE not to disclose information originating from that Member Country without its prior agreement.

### **Protection of Intellectual Property**

In the specific case of the protection of intellectual property, the OIE seeks to ensure that:

- (a) Information to which it has access will not be used for any other purpose than that for which it was made available to the Organisation;
- (b) Information will not be disclosed or provided to any person who is not bound by similar obligations of confidentiality and non-use;

except in the case that it can be demonstrated that any part of the information:

- was known to interested parties prior to any disclosure by or on behalf of OIE;
- or
- was in the public domain at the time of disclosure by or on behalf of OIE; or
  - became part of the public domain through no fault of the OIE; or
  - became available from a third party not in breach of any legal obligations of confidentiality.

### **Continuing duty of confidentiality**

In general there is a life-long duty of confidentiality with the exceptions described above as they relate to the work of OIE. This obligation does not cease after the termination of a working or other relationship with the OIE, except in the case that the information legally enters the public domain or if the Director General decides that the disclosure of such information is in the overriding public interest.

### **Management of Legitimate Confidentiality**

OIE Rules and procedures provide for the protection of legitimate confidentiality (See Annex A).

The OIE will manage legitimate confidentiality at two levels:

- A generic level covering all of the general areas described above; and

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<sup>3</sup> Which would include the use of the OIE PVS Tool and of the PVS Gap Analysis Tool.

- A specific level dealing with the protection of intellectual property.

At the generic level, OIE Experts, Members of Specialist Commissions, members of OIE Working Groups and ad hoc Groups, and specialists participating at the invitation of the Director General in meetings and missions are required to complete an Undertaking to protect legitimate confidentiality. Heads of institutions that are OIE Reference Centres<sup>4</sup> are required to complete a similar Undertaking covering the institution and its staff according to their mandate and obligations adopted by the World Assembly of the Delegates<sup>5</sup>.

Legitimate confidentiality in respect of members of the OIE Council is managed by the Council.<sup>6</sup> Confidentiality of the OIE Staff is managed under the terms of their working contracts.

At the specific level dealing with intellectual property, the Standard Operating Procedures for OIE Validation and Certification of Diagnostic Assays will continue to be used and will be adapted to other situations requiring the protection of intellectual property as appropriate. The completion of a generic undertaking to respect legitimate confidentiality does not annul the requirement to complete a specific undertaking in regard to the protection of intellectual property.

Failure to complete an Undertaking in respect of legitimate confidentiality may result in the person concerned no longer being considered as an OIE Expert or a member of a Working Group or *ad hoc* Group, or revocation of designation in the case of an OIE Reference Centre; alternatively, it may be decided to restrict the access of the person or institution concerned to any information available from the OIE. Such decisions shall be managed by the Director General in consultation as appropriate with the *Delegate* of the Member Country concerned, the executive head of the International Organisation with which the expert is associated, or the Council of the OIE. In the case of a Member of a Specialist Commission the Director General will consult the President of the Specialist Commission concerned (or one or both of its Vice Presidents if the matter concerns the President), the President of the Assembly and the Delegate on the action to be taken.

Any dispute relating to the interpretation or application of this Undertaking shall, unless amicably settled, be subject, at the request of either party, to one conciliator. Should the parties fail to reach agreement on the name of a sole conciliator, each party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law, as at present in force. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force. The parties shall accept the arbitral award as final.

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<sup>4</sup> Reference Centres include both Reference Laboratories and Collaborating Centres

<sup>5</sup> Resolution XXVIII adopted on 27 May 2004

<sup>6</sup> Decision of the Council, 22 September 2011.

## **Annex A: Legal basis – Extracts from the Basic Texts of the OIE**

### **Experts**

Experts shall provide the Director General with a statement covering potential conflicts of interest between themselves as OIE experts and any commercial entity in accordance with the procedure established by the Director General.

Experts shall respect the legitimate confidentiality of information with which they may be entrusted in the performance of their functions and shall submit such an undertaking to the Director General.

[GR 35]

### **Members of Specialist Commissions**

Members of Specialist Commissions shall provide the Director General with a statement covering potential conflicts of interest between themselves and any commercial entity in accordance with the procedure established by the Director General.

Members of Specialist Commissions shall respect the legitimate confidentiality of information with which they may be entrusted in the performance of their functions and shall submit such an undertaking to the Director General.

[SC 4]

### **Members of Working Groups and *ad hoc* Groups**

Members of Working Groups and *ad hoc* Groups shall provide the Director General with a statement covering potential conflicts of interest between themselves and any commercial entity in accordance with the procedure established by the Director General.

Members of Working Groups and *ad hoc* Groups shall respect the legitimate confidentiality of information with which they may be entrusted in the performance of their functions and shall submit such an undertaking to the Director General.

[WG 6]

### **Reference Centres**

The head of the institution shall provide the Director General with a statement of interest for the institution and its staff covering potential conflicts of interest between it as an OIE institution and any commercial entity in accordance with the procedure established by the Director General. The head of the institution shall ensure that the institution and its staff respect the legitimate confidentiality of information with which they may be entrusted in the performance of their functions for the OIE and shall submit such an undertaking to the Director General.

[RC 2]

### **Specialists**

[...] specialists shall respect the legitimate confidentiality of information with which they may be entrusted in the performance of their functions and shall submit such an undertaking to the Director General.

[SC 7]