

## Template for Letter to Document Procedures for Confidential Indigenous Knowledge

Note: instructions for staff for use of this template are found in Annex A.

Full name  
Title, if applicable  
Organization, if applicable  
Full postal address  
[If via email] abcd@xyz.com

**NEW – For salutation and Address: Gender-inclusive writing.**  
Do not refer to the correspondent as Mr or Mrs. Simply put the first and last names in the salutation.

**Subject: Procedures for inclusion of [Indigenous Community] Confidential Indigenous Knowledge Regarding [Project or regional / strategic assessment name]**

Dear...

I hope this letter finds you and your community well. The Impact Assessment Agency of Canada (the Agency)/ [XX Review Panel / committee] is pleased to consult/engage with [Indigenous community] for the assessment process for the [project / regional / strategic assessment name]. On [date], [name formal representative of Indigenous community] notified the Agency/review panel/ committee that they plan to submit Indigenous Knowledge, to be kept in confidence. [Include if relevant: Indigenous representative/community also requested confidentiality for Indigenous Knowledge to be shared orally during meeting(s) and/or ceremonies with the Agency/review panel/ committee]. The Agency/review panel/ committee recognizes the importance of Indigenous Knowledge within the impact assessment process and we are honoured that [Indigenous community] has agreed to share your Knowledge. The [Agency/review panel/ committee] discussed the request with [Indigenous community's representative or Chief & council] on [date].

This letter's objective is to:

- Seek [Indigenous community] agreement on how the Agency/review panel/ committee proposes to handle the confidential knowledge.
- Ensure you understand the exceptions where confidential information may be disclosed so you can make an informed decision if you would like to share the information or not.
- [include only if relevant] Confirm that [Indigenous community] consents to share the confidential Indigenous Knowledge with the parties identified below;

### Handling of Confidential Indigenous Knowledge

We recognize Indigenous data sovereignty and Indigenous Peoples' right to own and control data provided from, and provided about, their communities. The [Agency/review panel/ committee] confirms that the sharing of this confidential Indigenous Knowledge is only for the purposes of the assessment process for the [proposed Project / RA / SA]. The [Agency/review panel/ committee]

will not disclose any Indigenous Knowledge provided to us in confidence except as set out in this letter or with the written consent of the [representative or Chief & council] of [Indigenous community] for this [proposed project or RA/SA].

Confidential information must never be submitted through the online registry. The Agency wishes to confirm that [spell out information management requirements as per IM procedures, starting with how to submit it]. The [Agency/review panel/ committee] will keep the confidential knowledge separate from public records related to the impact assessment and apply appropriate information management procedures to protect it from disclosure. Please refer to the Agency's information management procedures for Indigenous Knowledge for more information.

The confidential knowledge will only be shared with Agency/review panel/ committee staff who are assigned to the assessment of [proposed project/ RA/SA], are required to view the knowledge to complete their roles within the assessment and will be kept in confidence and not be shared for anything other than the purposes of the impact assessment of [proposed project or RA/SA].

With respect to specific oral submissions provided during the impact assessment, the [Agency/review panel/ committee] will accept requests for sharing specific oral confidential Indigenous Knowledge, for example, during meetings or as part of the review panel's hearing process. The procedures in this letter apply to oral submissions. The [Agency Review panel/committee] will publish procedures for confidential hearings.

Indigenous Knowledge may be considered within the assessment including but not limited to: Incorporated into the impact assessment report, consultation report, transcripts, written summaries, or other materials created by the [Agency/review panel/ committee]; incorporated into documents that are subject to cabinet confidences or confidential advice to the Minister [Add details here about how knowledge may be considered or used within the assessment, including any methods for data analysis or processing]. As per [Indigenous community]'s request, [add here any specifics from the Indigenous community that the Agency has agreed to, such as any ways they do not want the confidential knowledge to be used, any specific IM practices, etc.]

#### [Ownership and Access to Confidential Indigenous Knowledge](#)

The [Agency/review panel/ committee] will adhere to the principles of Ownership, Control, Access, and Possession (OCAP®) and Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples Act* for the Indigenous Knowledge. These principles have guided the implementation of the approach outlined in this letter and the Agency's guidance documents, to guarantee that the [Indigenous community] has long-term access to, ownership of, and control of its data. These principles recognize the potential specific requests for the protection of their confidential Indigenous Knowledge, which have been discussed with the [Agency/review panel/committee] and are detailed here;

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[...]

The [Agency/review panel/committee] will meet the expectations and rights of [Indigenous community] in their application and implementation of these principles. The [Agency/review panel/committee] acknowledges that [Indigenous community] has only given consent for the Indigenous Knowledge to be used [describe what has been agreed to].

### Notice and Exceptions

For reasons of procedural fairness, and to document the evidence being considered in the assessment, the [Agency, or Review Panel or Committee] will post a notice on the online public registry stating that confidential Indigenous Knowledge has been received from [Indigenous community] but will not disclose any of the content of the confidential information. Confidential Indigenous Knowledge provided under the IAA is protected from public disclosure under the *Access to Information Act*.

Subsection 119(2) of the *Impact Assessment Act* [if this letter is being used in the interim period before an amended IAA, use this text instead: the Agency's [Guidance on confidential Indigenous Knowledge](#)...] provides exceptions where confidential Indigenous knowledge may be disclosed without written consent of the community or Knowledge Holder:

- if the knowledge is publicly available; or
- if the disclosure is necessary for the purposes of procedural fairness and natural justice; or
- for use in legal proceedings.

For more details on these exceptions, please consult the [guidance on confidential Indigenous Knowledge](#). You may also reach out to [Insert contact person and email] for more information. Under a policy approach, although not legally required to do so, the Agency will always consult [the Indigenous community] prior to disclosing confidential Indigenous Knowledge under any of these exceptions, to discuss options and an appropriate approach to disclosure.

When these exceptions are being applied, if the [Indigenous community] does not consent to disclosing the confidential Indigenous Knowledge, and if that confidential knowledge has not yet been factored into any analysis, assessment or conclusions for the reports to be provided to decision makers, then the confidential knowledge can be retracted from the impact assessment process. The Agency will then consider that the confidential Indigenous Knowledge was not provided for the assessment of the [project / RA / SA], and that specific confidential knowledge will not be considered and will not be documented in any analysis, reporting or decisions. If the confidential Indigenous Knowledge relates to potential impacts on Indigenous rights, withdrawing such knowledge may have ramifications for whether or not impacts on Indigenous rights could be fully assessed, addressed and/or accommodated. This will be explicitly

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discussed with the [Indigenous community] prior to the retraction of the Indigenous Knowledge from the assessment.

**Sharing with Other Parties**

[only include if applicable] The Agency wishes to confirm that [Indigenous community] consents to sharing the confidential knowledge with the following parties: [list specific other parties which could include: specific federal authorities, specific other jurisdictions, proponent].

**Confirm Consent**

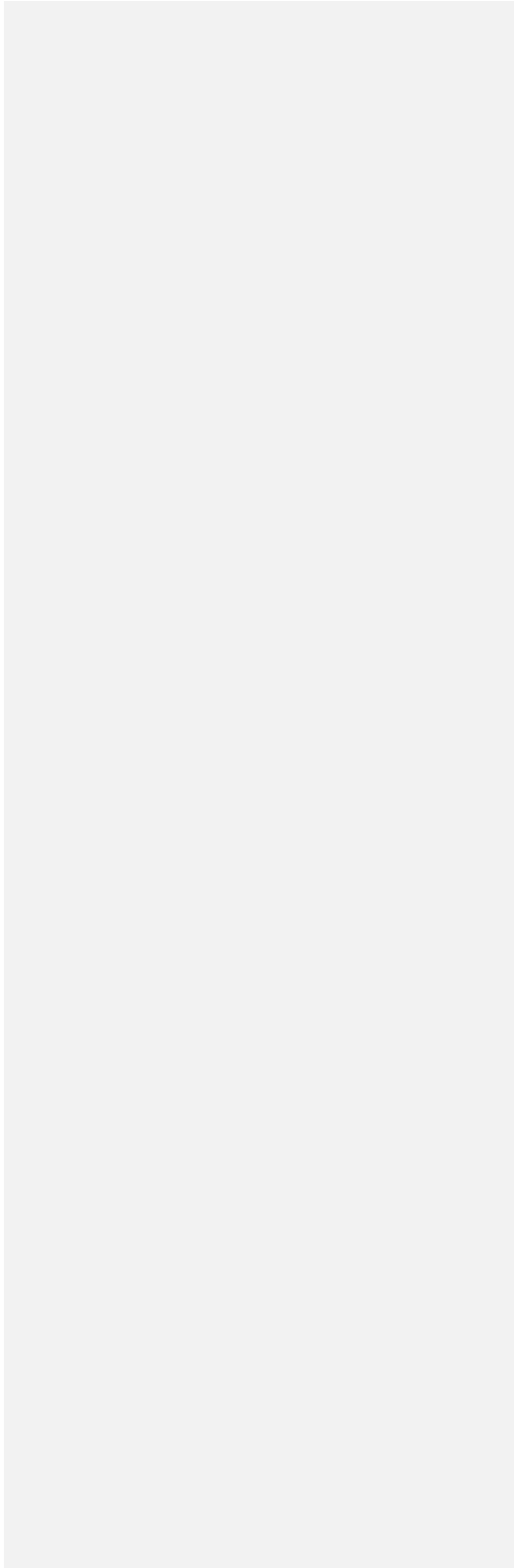
The [Agency/review panel/ committee] thanks [Indigenous community] for agreeing to share their confidential Indigenous knowledge. Please respond to this letter to confirm your understanding of, and consent, to the above. Should you have any questions or requested changes you can reach ...via their contact information below.

Sincerely,

[name]

Email

Phone number



## **Annex A**

### Instructions for Staff Regarding Use of this “Template for Letter to Document Procedures for Confidential Indigenous Knowledge”

Under section 119 of the *Impact Assessment Act* (the IAA), Indigenous Knowledge that is provided in confidence is required to be kept confidential (with certain exceptions). Staff of the Impact Assessment Agency of Canada (the Agency) need to document procedures for handling confidential Indigenous Knowledge. Committees for regional or strategic assessments and Review panels will set their own procedures based on their terms of reference, however they are bound by requirements of the Act, and this template can be used by a committee or review panel, should they wish to do so.

This template is a tool to use for writing a letter to document that approach, when an Indigenous community has let Agency staff or a committee or review panel know that the community wishes to provide confidential Indigenous knowledge (IK), whether orally (e.g., during a meeting); or in writing. Indigenous communities also have the options of signing a memorandum of understanding or signing a non-disclosure agreement (also called a confidentiality agreement) with the Agency; separate templates for MOUs and agreements are in development. Note that an MOU or agreement is never required, but the Agency can use one of those options if the Indigenous community does not wish to use a letter to document the approach to confidentiality. Alternatively, if the Indigenous community prefers an oral consent process to a written one, then oral consent can be recorded. This can be done by reading one of the templates and recording (audio or in notes) the Indigenous community providing oral consent, or by some manner that is most agreeable to the Indigenous community. However, consent must be recorded in some manner. This template only applies to confidential Indigenous Knowledge – if the community (or others such as the proponent on their behalf) is providing Indigenous Knowledge that is not confidential, it should be posted to the registry, and handled in the same way as all other records for the assessment.

Regarding confidential Indigenous Knowledge, Agency staff and members of a review panel or committee should follow these steps:

1. Prior to any information being submitted by Indigenous communities and the proponent, the Agency (or review panel/committee) must advise Indigenous communities and the proponent of the Agency’s or review panels/committee’s procedures for confidential IK, including informing the Indigenous community about confidentiality and the requirements of the IAA. Review panels may include this in their operational and/or hearing procedures.
2. Discuss whether the Indigenous community wishes to provide the IK in a way that avoids releasing confidential knowledge, such as by summarizing or generalizing the information before providing it to the Agency.
3. If the Indigenous community decides to provide confidential IK (and not provide a summarized version on the public registry), then describe the agreed upon approach to

confidentiality in writing. This should be done using the letter template (or exchange of emails or meeting notes that cover the basic points of the template), or if the Indigenous community requests it, using a confidentiality agreement.

4. Lastly, have the Indigenous community document that they agree with the approach, prior to the community submitting the confidential IK.

As noted in step 1, subject to certain exceptions, IK provided in confidence to the Agency, a review panel, the Minister, or a committee established to conduct a regional or strategic assessment cannot be disclosed without written consent from the Indigenous community or Knowledge Holder.

The exceptions are:

- when the information is publicly available;
- when disclosure is necessary for the purposes of procedural fairness and natural justice (this is when decision-makers must give specific parties (e.g., the proponent) a fair opportunity to see the confidential Indigenous knowledge, when that knowledge could affect a decision that has consequences on that party); or
- for use in legal proceedings.

Further, confidential IK provided under the IAA that cannot be disclosed under subsection 119 of the IAA is protected from public disclosure via access to information requests under the *Access to Information Act*. Confidential IK is considered and is to be treated as Protected B materials in accordance the Agency's Guidelines for Determining and Marking Sensitive Information (see Appendix A of the Guidelines, p. 22). Tools that support this discussion are the proactive disclaimer and the Information Management procedures.

As per step 1, Agency officials or review panel / committee members should:

- Explain that any Indigenous Knowledge provided is publicly available by default unless the Indigenous governing body or Knowledge Holder explicitly states that the knowledge is to be kept in confidence;
- Explain the exceptions under subsection 119;
- Explain that the Agency will not use any confidential IK except for the purpose of carrying out responsibilities in respect of the current impact assessment, regional or strategic assessment for which it is shared. This includes a discussion of how the confidential IK will be used through the process, including being incorporated into documents that are subject to cabinet confidences or are confidential advice to the Minister, being incorporated into the impact assessment report, consultation report, notes, transcripts, written summaries, evidence or other materials created by the Agency;
- If for any reason, the Agency or others want to use the confidential IK for future assessments, consent will be asked from the Indigenous governing body or the

Knowledge Holder and an updated approach to handle that confidential IK will be agreed upon;

- Explain that the Agency makes it a practice to take notes at every meeting with Indigenous communities and will ask whether confidential Indigenous Knowledge will be provided orally during the meeting. The community and the Agency will agree on what should or should not be captured in notes prior to commencing any meeting. Draft meeting notes will be circulated to the Indigenous community for validation. If the community agrees that confidential Indigenous Knowledge is to be recorded in the notes, then the confidential Indigenous Knowledge will be recorded in a separate document from general meeting notes, and it will be recorded and managed as in the same confidential manner as confidential Indigenous Knowledge that is provided in writing. If confidential Indigenous Knowledge was not identified at the beginning of the meeting, it can be identified at the end of the meeting to ensure proper procedure.
- Discuss information management for confidential Indigenous Knowledge (see [Information Management Procedures for Indigenous Knowledge](#)) including specifying who will have access to the knowledge, why, and how it's determined, and consent for the knowledge to be digitized, copied, or translated into other formats and/or media if necessary; and,
- Verify whether the Indigenous community would be willing to share the confidential IK with other specified parties, for example with an expert federal authority (if the confidential IK is related to the expertise of that federal authority). If the Indigenous community will provide their IK via the proponent, these discussions will need to include the proponent. Even if IK is provided to the Agency, it may be important to include the Proponent as a recipient of the confidential IK so that the Indigenous community, the Agency and the Proponent will have the same information as they work through the specific Project Phase so that everything is more transparent, and the consultation is more meaningful. This should be included in the letter drafted based on the template below.

To expand upon step 2 above, prior to any Indigenous knowledge being shared with the Agency or review panel / committee, staff should discuss with the Indigenous community the nature of IK which the Indigenous community may wish to share. Detailed information that is considered confidential may not be necessary for the assessment. The Indigenous community could summarize or generalize the information before providing it to the Agency (or review panel/ committee), so that the confidential information is not included. For example, specific locations of burial sites or sacred sites may not need to be disclosed, although general information that burial or sacred sites are present in the vicinity would be beneficial for the assessment. If the Indigenous community wishes to share a combination of non-confidential and confidential Indigenous Knowledge, then precisely what information is to be kept confidential, and is subject to the legislative exceptions, must be confirmed and outlined in the below letter or other recorded form.

As per step 3 above, the letter to document the approach to confidential Indigenous Knowledge set out below should be adapted from this template on a case-by-case basis, to ensure confidential IK is handled in a manner that upholds the conditions placed on its use. The letter should outline if the confidential IK can be shared with others (such as federal departments), the information management procedures for the confidential IK, and any conditions informing the application of the exceptions provided under s. 119 of the IAA.

The use of a template for a letter to document the approach to confidential Indigenous Knowledge is optional. If the Indigenous community prefers, the approach to handling their confidential Indigenous Knowledge can be documented in meeting notes or in an email; the text below can be adapted to be used as appropriate. If a more informal approach is taken, the Agency must ensure the Indigenous community is aware of all of the points noted in steps 1-4 above and for review panels or committees, all information on this matter must be made available for all participants on the registry site.

The Agency must document the receipt of confidential IK by posting a registry notice of receipt of confidential IK (see [template](#) for such a notice) and by adding it to the [tracker for confidential IK](#) (or asking Indigenous Policy Division to add it to the tracker via [indigenouspolicy-politiquesautochtone@iaac-aeic.gc.ca](mailto:indigenouspolicy-politiquesautochtone@iaac-aeic.gc.ca)).