



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Communications Act 8 of 2009
sections 28 and 29

**Regulations regarding Confidential Information and
Confidential Communications with the Authority**

General Notice 307 of 2012

(GG 5037)

came into force on date of publication: 13 September 2012

These regulations were made by the Board of the
Communications Regulatory Authority of Namibia.

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Definitions

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Regulations regarding Confidential Information and Confidential Communications with the Authority

1. In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and -

“Act” means the Communications Act, No. 8 of 2009.

Submission of documents to the Authority

2. In these regulations, when persons are permitted or called upon to submit information to the Authority in writing, they may do so either physically or electronically -

- (1) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- (3) by electronic mail to the following address: legal@cran.na
- (4) by facsimile to the following facsimile number: +264 61 222 790; or
- (5) in any other manner or at alternative addresses set out by the Authority from time to time.

Applicability

3. These regulations are applicable to -

- (1) confidential information submitted to the Authority as contemplated in section 28 of the Act, and
- (2) confidential communications with the Authority as contemplated in section 29 of the Act.

Confidential information

4. (1) Subject to sub-regulation (4), any person submitting written information to the Authority may designate all or part of the information confidential, in terms of section 28(1) of the Act.

(2) If a person designates all or part of the information confidential, it must submit in writing to the Authority, clear and concise reasons why the information is designated confidential.

(3) If the Authority has reason to believe that the designated information is not confidential, it will inform the person along with its reasons for that belief, and inform the person that she may withdraw the information, consent that it will not be treated as confidential, or request a hearing on the issue of confidentiality to be conducted in terms of section 28 of the Act.

(4) Any information that is required to be made public by a person or the Authority in terms of the Act or any regulations made in terms of the Act, may not be designated confidential.

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Hearings

5. (1) If the person claiming confidentiality in terms of section 28(3)(c) of the Act requests a hearing, the Authority may hold either a paper hearing or an oral hearing or both.

(2) In terms of section 28(4), the burden of proof lies with the person claiming confidentiality.

Written Submissions (Paper hearings)

6. (1) If the Authority decides to hold a paper hearing, it will invite the person requesting the hearing to submit in writing to the Authority reasons why the person disagrees with the Authority's belief that the designated information is not confidential, within the time set out in the invitation.

(2) The Authority may request further written or oral submissions which must be provided to the Authority in the manner set out by the Authority.

(3) All written submissions must -

- (a) contain the name and contact details of the person making the submission and the name and contact details of the person for whom the submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority.

Oral hearings

7. (1) If the Authority decides to hold an oral hearing, it will invite the person requesting the hearing to make oral submissions to the Authority with regard to the reasons why the person disagrees with the Authority's belief that the designated information is not confidential, within the time set out in the invitation.

(2) The format and agenda of the hearing is at the discretion of the Authority.

(3) All oral submissions must -

- (a) include a statement indicating the name and contact details of the person making the oral submission and the name and contact details of the person for whom the oral submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority.

(4) The Authority may request further oral or written submissions, which must be provided to the Authority in the manner set out by the Authority.

Decisions of the Authority

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8. (1) At the conclusion of the hearing, the Authority will decide whether the designated information is confidential.

(2) The Authority's decision and reasons will be communicated to the person requesting the hearing, and if the decision is that the information is not confidential, the Authority will inform the person that she may withdraw the information or consent that it will not be treated as confidential.

***Ex Parte* Communications**

9. A person may not communicate with the members of the Board, the CEO or staff members of, or consultants to the Authority, to discuss the subject matter of request for confidentiality, except as provided for herein.

Record of proceedings

10. (1) All documents deemed relevant by the Authority to the proceedings contemplated by these regulations, including the Authority's decision and reasons, must be maintained by the Authority in its files located at the head offices of the Authority.

(2) Except for confidential information, any person may examine the Authority's files at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority from time to time, and, if available, on the Authority's website where copies may be downloaded free of charge.

Reconsideration

11. (1) The Authority may, on its own, reconsider any decision made in terms of these regulations within the time set out in section 31 of the Act.

(2) Any person may submit to the Authority in writing a request to reconsider any decision made in terms of these regulations within 30 days of notice of the decision, and the Authority must reconsider such regulation within the time set out in section 31 of the Act.

(3) The Authority may publish in Government Gazette its decision on reconsideration without further submissions being received, or it may provide an opportunity for further submissions in a manner set out by the Authority.

Confidential communications with the Authority

12. (1) Subject to sub-regulation (2), a person may submit in writing to the Authority a request for a confidential meeting with the Authority, in terms of section 29(1) of the Act.

(2) A person may not request a confidential meeting with the Authority -

(a) if the topic(s) of the meeting concerns information that the Authority believes or has decided is not confidential in terms of the Act and these regulations; or

(b) if that person is prohibited from engaging in *ex parte* communications with the Authority on the topic(s) of the requested meeting by any regulations made in terms of Act.

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- (3) The request for a confidential meeting with the Authority must include -
- (a) the name and contact details of the person making the request and the name and contact details of the person for whom the request is made, if different;
 - (b) a clear and concise statement(s) of the topic(s) of the meeting;
 - (c) a list of all the persons who will attend the meeting; and
 - (d) a list of all of the written information, if any, that will be submitted to the Authority at the meeting.

(4) If the Authority grants the request in terms of section 29(3) of the Act, it will publish notice of the meeting in the *Government Gazette* at least seven days prior to the meeting, provided that if the person requesting the meeting has shown sufficient cause for urgency, publication in the *Government Gazette* may be made less than seven days.

(5) At the conclusion of the meeting, the Authority will prepare a report setting out all relevant details of the meeting and keep that report in its files located at the head offices of the Authority.

(6) Any written information submitted to the Authority at the meeting will be treated as if designated confidential in terms of section 28 of the Act, in which case the regulations herein regarding confidential information will apply, subject to section 29(5) of the Act.