

WOAH Policy on the Protection of Legitimate Confidentiality

Introduction

The World Organisation for Animal Health, whose statutory name is *Office International des Epizooties* (hereinafter ‘WOAH’), 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 trade of animals under good animal welfare conditions and safe trade in animal products.

One of the main features of the work of WOAH is its management of information. WOAH’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 or territories.

In addition to WAHIS, WOAH 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 WOAH covering the protection of intellectual property in relation to the evaluation of diagnostic kits and other work of the Biological Standards Commission¹ as well as the use of PVS manuals by WOAH accredited experts. Similarly, specific arrangements apply to manage information concerning WOAH official procedures and policy for member countries or territories wishing to apply for recognition of animal disease status².

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, WOAH maintains a transparent approach to information management but there are some circumstances which require the protection of confidential data and other information. WOAH’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, WOAH 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 or territories as regards:
 - public security,
 - defence and military matters,
 - 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

¹ Standard Operating Procedure for Registration of Diagnostic Kits:
<https://www.woah.org/app/uploads/2021/06/a-sop-may-2021.pdf>

² Standard Operating Procedures for Official Recognition of Disease Status:
<https://www.woah.org/en/what-we-do/animal-health-and-welfare/official-disease-status/>

protection of personal data and personal opinion.

WOAH 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 audits³,

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

As an intergovernmental organisation, WOAAH also respects the legitimate confidentiality of certain decision-making processes, in particular by protecting information or opinions considered to be before 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 or territory may request WOAAH not to disclose information originating from that member country or territory without its prior agreement.

Protection of Intellectual Property

In the specific case of the protection of intellectual property, WOAAH 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 WOAAH; or
 - was in the public domain at the time of disclosure by or on behalf of WOAAH; or
 - became part of the public domain through no fault of WOAAH; 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 WOAAH. This obligation does not cease after the termination of a working or other relationship with WOAAH, 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

WOAH rules and procedures provide for the protection of legitimate confidentiality (See Annex A).

WOAH will manage legitimate confidentiality at two levels:

- A generic level covering all of the general areas described above; and
- A specific level dealing with the protection of intellectual property.

At the generic level, Experts, members of Specialist Commissions, members of 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 Reference Centres⁴ 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 Delegates⁵.

³ Which would include the use of PVS Tool and of the PVS Gap Analysis Tool.

⁴ Reference Centres include both Reference Laboratories and Collaborating Centres.

⁵ Resolution XXVIII adopted on 27 May 2004.

Legitimate confidentiality in respect of members of the Council is managed through specific undertakings.⁶ Confidentiality of WOHAH staff is managed under the terms of their employment contracts.

At the specific level dealing with intellectual property, the Standard Operating Procedure for Registration of Diagnostic Kits 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 a WOHAH Expert or a member of a Working Group or *ad hoc* Group, or revocation of designation in the case of a Reference Centre; alternatively, it may be decided to restrict the access of the person or institution concerned to any information available from WOHAH. Such decisions shall be managed by the Director General in consultation as appropriate with the Delegate of the member country or territory concerned, the executive head of the International Organisation with which the expert is associated, or the Council. 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, controversy or claim arising out of or relating to the interpretation, application or performance of this policy, including its existence, validity or termination, shall be settled amicably between the parties hereto. Should the parties fail to resolve amicably the dispute within sixty (60) calendar days after the date of notice starting a dispute, each party shall have the right to submit the dispute, controversy or claim by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties.

⁶ Decision of the Council, 22 September 2011.

Annex A: Legal basis – Extracts from the Basic Texts of the World Organisation for Animal Health

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.