

## American Institute of Constructors

### Constructor Certification Commission Policy and Procedures No. 5.8

#### Confidentiality

Policy – The American Institute of Constructors Constructor Certification Commission members, employees, contractors and volunteers may not disclose, divulge, or make accessible confidential information belonging to, or obtained through their affiliation with the Commission to any person, including relatives, friends, and business and professional associates, other than to persons who have a legitimate need for such information and to whom the Commission has authorized disclosure in writing. This policy is not intended to prevent disclosure where disclosure is required by law.

Responsibility – Constructor Certification Commission

Reference Commission Documents – Commission Document No. 25 - Confidentiality Statement

Procedures – The following procedures will be followed to insure the Commission's Confidentiality policy is adhered to:

1. Commission members, employees, contractors and volunteers shall sign a Confidentiality Statement (Commission Document 25). The Statement is to be signed upon initial affiliation with the Commission and every year thereafter and retained in the Commission files.
2. Commission members, employees, contractors and volunteers shall use confidential information solely for the purpose of performing services in their designated role.
3. Commission members, employees, contractors and volunteers must exercise good judgment and care at all times to avoid unauthorized or improper disclosures of confidential information. Conversations in public places, such as restaurants, elevators, and public transportation, should be limited to matters that do not pertain to information of a sensitive or confidential nature.
4. Commission members, employees, contractor and volunteers should be sensitive to the risk of inadvertent disclosure and should for example, refrain from leaving confidential information on desks or otherwise in plain view and refrain from the use of speaker phones to discuss confidential information if the conversation could be heard by unauthorized persons.
5. At the end of a Commission member's term in office or upon the termination of an employee's, contractor's or volunteer's relationship with the Commission, he or she shall return, at the request of the Commission, all documents, papers, and other materials, regardless of medium, which may contain or be derived from confidential information, in his or her possession. In the event that the individual advises the Commission that the requested documents have been destroyed or lost, the individual will provide certification to the Commission identifying how the documents were lost or destroyed and stating that documents are not in the possession of any other person or entity.

6. In the event that a member of the Commission, one of its volunteers, employees or contractors divulges confidential information, and it is brought to the attention of the Commission by any party, the Commission has the responsibility to conduct a formal investigation to determine, if in fact, one or more of the conditions contained in the Confidentiality Agreement were breached.
7. The formal investigation must begin with a request from the Complainant. Complaints must be submitted, in writing, to the Commission Certification Manager or a designated Commission individual and shall consist of the following:
  - a. Person's name and contact information
  - b. Complainant's name and contact information
  - c. Copies of non-confidential written material supporting the complaint
  - d. Specific confidential information that was divulged.
  - e. Any other written information supporting the complaint.
8. Upon receipt of the complaint, the Certification Manager will immediately assign it a sequential case number. In addition he/she will review the complaint for relevance and completeness, verify that the person named in the complaint is a current member of the Commission, or one of its volunteers, employees or contractors, create a working copy of the entire complaint file by removing names and other identifying information pertaining to the individual and the Complainant, mark all documents "confidential" and will include information regarding previous sanctions imposed on this individual, if any, and pass a working copy of the complaint, including all supporting information, to the Commission Chair. In the case where the complaint is against the Commission Chair, the information will be sent to the Commission Vice-Chair. For the balance of this procedure it will be assumed that the Commission Chair is not the person named in the complaint.
9. Complaints against certified Commission Members or staff will result in limiting the interaction of the named person or person(s) to only non-sensitive and non-confidential Commission matters until the complaint is resolved pursuant to these procedures.
10. The Commission Chair will review the working copy and if he/she agrees that the materials are complete enough for consideration by the full Commission, he/she will ask the Certification Manager to provide a confidential working copy to all members of the Commission. However, if the Commission Chair does not agree that the materials are complete enough for consideration by the full Commission, he/she will ask the Certification Manager to take appropriate remedial action, such as asking the Complainant to clarify documentation or to provide additional information.
11. When a Complainant's documentation is distributed to the full Commission, and in no event more than thirty (30) calendar days after the date on which the written complaint is determined to be complete enough for consideration by the full Commission, the Certification Manager will send a letter acknowledging receipt of the complaint to the Complainant stating the following:
  - a. The complaint has been received and provided to the Commission for its consideration.
  - b. The named individual will be informed of the complaint along with the Complainant's name and contact information.

- c. Action regarding the complaint will be taken in accordance with the procedures contained in this Commission Policy.
  - d. All Commission deliberations are confidential.
  - e. The Complainant is requested to assist in maintaining impartiality and confidentiality.
  - f. After the final disposition by the Commission and either the conclusion of the named individual's appeal or the expiration of the named individual's opportunity to appeal, an appropriate record of the final disposition will be posted on a publicly accessible section of the Commission's website which is open for examination by the Complainant and the public at any time.
  - g. The Commission appreciates the Complainant's action which assists in maintaining the integrity and value of the Commission's credentialing activity.
12. At the same time that the Certification Manager prepares the above letter to the Complainant, he/she will send a notice by registered mail (return receipt requested), or by any other form of reliable overnight or other delivery in which a record of such delivery is maintained, to the named individual. This letter will state that:
- a. A complaint has been received and passed to the Commission for its consideration.
  - b. Action regarding the complaint will be taken in accordance with this Policy.
  - c. Deliberations are confidential.
  - d. The named individual will be advised by registered mail of the decision of the Commission.
  - e. The named individual has a right to a hearing on the complaint.
  - f. The named individual has a right to appeal an adverse action in accordance with the Commission's Appeal Policy.
  - g. At the point of final disposition and action, if any, an appropriate record of such will be posted on a publicly accessible section of the Commission website.

This letter also will:

- Provide the name and contact information of the Complainant.
- Ask the named individual to admit to or deny in writing the existence of the breach of the Confidentiality Statement that has been identified in the complaint.
- Ask the named individual to provide documents, if any, to support his/her denial of the complaint.
- State the address to be used in responding to the Commission via the Certification Manager.
- Request that the named individual to communicate only in writing to the Certification Manager.
- State that names and personally identifying information have been removed from the version of the complaint available to Commission members and, as such, a case number has been assigned by the Certification Manager and the named individual is required to assist in the Commission's efforts to preserve this confidentiality.

Enclosures to this letter will include:

- A full working copy of the complaint.

- A copy of this Policy.
  - A copy of the Appeals Policy.
  - A statement that the named individuals response to this letter must be in writing and postmarked within sixty (60) calendar days of the date of the notice, and this date should be expressed as a specific due date.
13. When received, a confidential working copy of the named individual's response (the Executive Director will endeavor to remove the named individual's entire name and contact information) will be provided to all Commission members by the Certification Manager.
  14. The Commission will review all of the materials submitted along with the named individual's written response. The Commission may elect to work as a committee of the whole or the Commission may determine that one of its members needs to be assigned to investigate the documents further to analyze, synthesize, reconcile, or otherwise assure that the file on its face appears complete, factual, and consistent. While the Commission may make independent factual investigations, it is not obligated to do so and will generally make decisions based on the written submissions of the Complainant and the named individual.
  15. After the Commission reviews and deliberates, it shall make a determination whether it has found it is more likely than not (the review standard) that a breach of the Confidentiality Statement occurred.
  16. In the event it is determined under the aforementioned review standard that a breach of the Confidentiality Statement did not occur it shall dismiss the complaint without prejudice. The Certification Manager will notify the named individual via registered mail, return receipt requested, or by any other form of reliable overnight or other delivery in which a record of such delivery is maintained.
  17. In the event it is determined that it is more likely than not that a breach of the Confidentiality Statement occurred the Commission will notify the named Individual in writing of the finding and offer the named individual the Opportunity for a hearing. The notification shall:
    - a. Be in writing and sent via registered mail, return receipt requested, or by any other form of reliable overnight or other delivery in which a record of such delivery is maintained.
    - b. Explain the alleged aggrieved conduct and why such conduct constitutes grounds for disciplinary action
    - c. Set a deadline of fifteen (15) days for the named individuals to respond in writing to request a hearing.
  18. If the named individual fails to request a hearing before the deadline the Commission will make a decision regarding disciplinary action for the case as described in item 23 below and the noted follow up actions taken.
  19. In the event that a hearing is requested, the Commission shall work with the named individual and the Certification Manager to schedule a teleconference hearing at a mutually convenient date and time and the named individual shall be notified in writing of such hearing date and time. At the time the hearing is scheduled, the named individual will be informed that the hearing will not take place in his or her absence no matter what the situation and that the Commission will determine the disciplinary action, if any, based

on all of the information they have to date. Once a meeting time and arrangements have been set after consultation with the named individual, requests for changes to such arrangements shall only be honored pursuant to the Commission's Chair's sole discretion. In the event of a sudden illness or accident the Commission will reschedule the hearing at a time convenient to the named individual.

20. Upon request by the Commission, the Certification Manager, and the Commission's Legal Counsel shall be available to assist the Commission at the Hearing. The Commission Chair shall preside at the hearing. The named individual may be represented by counsel at the hearing. No formal legal rules of evidence, cross-examination, oath, and other procedures will apply to hearings.
21. Not less than three (3) Commission members shall be in attendance for the hearing.
22. The Commission Chair shall have general discretion to set the agenda and conduct the hearing in a fair and expeditious manner.
23. The named individual will be responsible for his/her expenses associated with a breach of Confidentiality Statement investigation or case, including the costs associated with any witnesses or legal counsel.
24. At the conclusion of the hearing, the Commission will review the hearing record as well as the written record and, if a finding of a breach of the Confidentiality Statement is made, will make a decision regarding disciplinary action for the case. Disciplinary actions within the purview of the Commission pertain only to the role that the named individual has with the Commission. The maximum penalty the Commission may impose is to terminate their official relationship to the Commission. The Commission may impose lesser penalties and may set a time limit on the penalty or make it permanent. The Commission will not initiate civil or criminal actions and will avoid involvement in same to the extent practical.
25. In the event the named individual does not appear at the hearing or sends an individual to represent him or her, the hearing will not take place and based on the information the Commission has to date will make a decision on a disciplinary action as described in item 23 above.
26. The Certification Manager will notify the named individual of the Commission's decision by registered mail, return receipt requested, or by any other form of reliable overnight or other delivery in which a record of such delivery is maintained.
27. In the event that the Complainant withdraws the complaint, the investigation will be immediately terminated and the named individual will be so notified of the dismissal of the complaint.
28. In the event of receipt of official notification of the death of the named individual anytime during the investigation process, the investigation will immediately be terminated and the Complainant so notified.
29. The named individual may appeal the Commission's decision in accordance with its Appeals Policy. The appeal must be initiated by the named individual within thirty (30) calendar days of the date on the delivery of the notice letter stating the decision.
30. If, and only if, a decision adverse to the named individual is reached, and the appeal process has been exhausted, then the action taken against the named individual will be posted on a publicly accessible section of the Commission's website.
31. The Commission has the right to resolve any complaint through negotiation and discussion at any time during the investigation. Any settlement reached through

negotiation and settlement may be deemed confidential and not discussed with any Commission member or staff, complainant or other third party.

32. The Commission shall not be liable for damages in the carrying out of its obligations and duties in accord with these established procedures.
33. Copies of all documents and related correspondence, generated in complying with this policy will be placed by the Certification Manager in the respective individual's secured Commission file.

### **Revision History**

Last Revision: 12/11/2021