

**THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE**  
**POLICY AND PROCEDURES REGARDING “SENSITIVE INFORMATION” SUBMITTED**  
**VOLUNTARILY FOR USE IN DEVELOPING GOVERNMENTAL POLICY**

The Massachusetts Technology Collaborative (“MTC”) is subject to the Massachusetts Public Records Act, M.G.L. c. 66 (the “Public Records Act”), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, “public records” include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, unless it falls within the scope of a specific exemption from the Public Records Act such as the one described below, any information submitted to MTC by any entity (“a Submitting Party”) in response to a voluntary request for information, in support of a grant application, in response to a request from the MTC (including, but not limited to an RFQ, RFP and RFI), or otherwise, is a “public record” and is subject to public disclosure as set forth in the Public Records Act. For purposes of this statement of policy and procedures, references to MTC are applicable to its various operating divisions.

It is MTC’s expectation and belief that most, if not all, documents it will receive in response to or in connection with any request for the voluntary submission of information will not contain any information that would warrant an assertion by MTC of an exemption from the Public Records Act. However, MTC does recognize that there may be exceptional circumstances in which parties may, upon a condition of confidentiality; offer to provide information to MTC in documentary form that is likely to assist in the formulation of governmental policy and, thus, MTC may, in appropriate circumstances, make a promise of confidentiality for such information. To protect all parties involved, MTC has developed an expedited process to handle requests for confidential treatment and to provide promises of confidentiality in those exceptional circumstances in which it may be appropriate. Submitting Parties should assume that unless they receive an express written promise of confidentiality in accordance with the procedure described herein, all documents submitted to MTC in response to any or in connection with any request for the voluntary submission of information are subject to public disclosure without any formal public records request and without any prior notice to the Submitting Party.

**Information submitted to MTC in any form other than a hard copy document will not be**

**subject to the procedures set forth in this Policy. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party. Submitting parties should therefore take care in ensuring that any such information is only received by MTC in the form of a hard copy document.**

“Governmental Policy Exemption”

For purposes of the Public Records Act, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth therein or in other statutes, including M.G.L. c. 4, Section 7, clause Twenty-Sixth. While it is not the ultimate arbiter of the scope of particular exemptions from the Public Records Act, MTC believes that the so-called “Governmental Policy Exemption” would apply to documents requested by MTC under a promise of confidentiality and then subsequently submitted by a Submitting Party in response or in relation to a request for the voluntary submission of information. That exemption applies to

trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this sub clause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.

G.L. c. 7, § 4, cl 26(g). Two limitations on this exemption must be emphasized. First, this exemption applies only to otherwise qualifying documents that are provided to MTC upon a “promise of confidentiality.” As stated above, MTC anticipates that few, if any, documents it will receive in response to any request for the voluntary submission of information will warrant a promise of confidentiality. MTC will make a promise of confidentiality only after a determination has been made that the documents in question are, in fact, likely to assist in the development of governmental policy and the harm from their disclosure would warrant an assertion of an exemption from the Public Records Act. Second, the submission of the information must not be pursuant to any legal requirement or as a condition of receiving a government contract, grant, award of financial assistance or other benefit.

The procedure by which MTC will reach and implement a determination that particular

information is likely to assist in the development of governmental policy and that it warrants an assertion of an exemption the Public Records Act is described below.

#### PROCEDURE TO REQUEST PROMISE OF CONFIDENTIALITY

A Submitting Party that desires to submit documents to MTC under a promise of confidentiality must pursue the following procedures in order to secure such promise:

1. Prior to submitting documents to MTC which a Submitting Party believes would fall within the Governmental Policy Exemption and for which it requests a promise of confidentiality from MTC as a precondition of their submission, the Submitting Party must submit a request via e-mail to [rapidreply@masstech.org](mailto:rapidreply@masstech.org), describing the documents and information (without disclosing the actual sensitive information) that it would, upon a promise of confidentiality, submit to MTC in response to or otherwise in connection with a request for the voluntary submission of information. The e-mail communication must provide a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure as well as a specific date upon which the disclosure of the documents would no longer result in harm. MTC does not now anticipate that it will agree to keep documents provided in response to or in connection with any request for the voluntary submission of information confidential for more than three years and, unless it concludes specifically that another period is appropriate, it will be presumed that any risk of harm from disclosure of the documents will no longer exist after one year from the date the subject documents are provided to MTC and any promise of confidentiality will be limited to one year from the date the subject documents are provided to MTC. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility and obligation to provide detailed explanations for each such document.
2. MTC's General Counsel shall review the Submitting Party's e-mail communication concerning the request for confidential treatment, the Public Records Act, and such other information as may be appropriate and shall, in his sole discretion, determine whether the

information in question is, in fact, likely to assist MTC in the development of governmental policy and would warrant an assertion of an exemption from the Public Records Act.

3. Within seven business days of receipt by MTC of an e-mail communication including all of the required information, MTC's General Counsel shall provide the Submitting Party with written notice of MTC's determination of whether it should make a promise of confidentiality with respect to some or all of the documents or information described in the Submitting Party's letter as well as its determination of the date upon which any promise of confidentiality should expire ("Offer of Confidentiality Letter"). No consultant to MTC or employee of MTC other than the General Counsel has any authority to make any promise of confidentiality with respect to documents or information provided to MTC in response to or in connection with a request for the voluntary submission of information.
4. At the time of a Submitting Party's submission of documents to MTC upon a promise of confidentiality, the Submitting Party must (i) clearly and unambiguously identify each and every such document that it contends are within the parameters of the promise of confidentiality specified in the "Offer of Confidentiality Letter" from MTC's General Counsel, and (ii) provide those identified documents to MTC in a separate envelope or other transmittal container specifically and prominently labeled: "Contains Sensitive Information." It is the Submitting Party's responsibility and obligation to ensure that all such documents are sufficiently identified as "Sensitive Information," and the Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is within the parameters of the promise of confidentiality specified in the "Offer of Confidentiality Letter" from MTC's General Counsel.
5. Documents that are not provided upon a promise of confidentiality and/or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any

formal public records request for documents, as set forth below, shall be inapplicable.

6. At the time MTC receives documents submitted under a promise of confidentiality in accordance with the procedure specified herein, such documents shall be segregated and stored in a secure, locked filing area (the “Safe”) when not being utilized by appropriate MTC staff. By submitting a response to or in connection with any request for the voluntary submission of information, the Submitting Party certifies, acknowledges and agrees that (a) MTC’s receipt, segregation and storage of documents designated by Submitting Party as “Sensitive Information” does not represent a final determination that such documents fall within the parameters of the promise of confidentiality specified in the “Offer of Confidentiality Letter” from MTC’s General Counsel, the Governmental Policy Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as “Sensitive Information” or MTC was negligent in disclosing such documents. In furtherance of the foregoing, by submitting a response to or in connection with any request for the voluntary submission of information, the Submitting Party certifies, acknowledges and agrees that it is the Supervisor of Public Records and/or the courts of the Commonwealth of Massachusetts respectively that has the authority to make a final determination as to the applicability of an exemption under the Public Records Act.
7. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall, except as otherwise provided in this Policy, produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has, in accordance with the procedures specified in this Policy, been provided under a promise of confidentiality, MTC shall notify the Submitting Party in writing of MTC’s receipt of the public records request.
8. MTC’s General Counsel shall review the subject documents and if he determines that the documents in question are within the parameters of the promise of confidentiality specified in the Offer of Confidentiality Letter, MTC shall notify the requesting party that

the subject documents are exempt from disclosure under the Governmental Policy Exemption.

9. In the event that MTC's General Counsel makes an initial determination that some or all of the documents in question are not within the parameters of the promise of confidentiality specified in the Offer of Confidentiality Letter, MTC shall provide the Submitting Party an opportunity to present information and/or legal arguments regarding the question of whether the documents in question are within the parameters of the promise of confidentiality specified in the Offer of Confidentiality Letter. Notwithstanding any information or arguments provided by the Submitting Party, MTC's General Counsel's determination regarding the applicability of the promise of confidentiality to any documents provided to MTC shall be final and not subject to further review by any agency, official or court. In furtherance of the foregoing, by submitting a response to or in connection with any request for the voluntary submission of information, the Submitting Party certifies, acknowledges and agrees that it waives any right it may now or later have to and that it will not challenge, seek review of, or otherwise initiate any action concerning MTC's General Counsel's determination regarding the applicability of the promise of confidentiality to any documents provided to MTC.
10. In the event the requesting party pursues a review of MTC's General Counsel's determination that the documents are exempt from disclosure, MTC shall notify the Submitting Party of such action and shall support any reasonable effort by the Submitting Party to participate or be heard in the review of that determination by the Supervisor of Public Records.
11. In the event the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

**THE SUBMITTING PARTY'S SUBMISSION OF DOCUMENTATION TO MTC SHALL REQUIRE A SIGNED CERTIFICATION THAT IS REQUIRED TO BE PROVIDED TO MTC ON OR BEFORE THE SUBMISSION OF ANY DOCUMENTS STATING THAT SUBMITTING PARTY ACKNOWLEDGES, UNDERSTANDS AND AGREES WITH THE APPLICABILITY OF THE FOREGOING PROCEDURES TO ANY DOCUMENTS SUBMITTED TO MTC BY SUBMITTING PARTY AT ANY TIME, INCLUDING BUT NOT LIMITED TO THE ACKNOWLEDGEMENTS SET FORTH HEREIN, AND THAT SUBMITTING PARTY SHALL BE BOUND BY THESE PROCEDURES.**

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.

**CERTIFICATION OF SUBMITTING PARTY**

**I certify that: (1) I have read and understand the preceding Policy and Procedures Regarding Submission of Sensitive Information (the “Policy and Procedures”), (2) I am the Submitting Party or am the duly authorized agent of the Submitting Party, with specific authority to make this certification and therefore bind Submitting Party, and (3) Submitting Party agrees to be bound by the Policy and Procedures, and by any and all acknowledgements set forth therein.**

**Signed under the penalty of perjury on this \_\_\_ day of \_\_\_\_\_, 20\_\_.**

\_\_\_\_\_  
(Signature of Submitting Party or Agent)