

THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE POLICY AND PROCEDURES REGARDING SUBMISSION OF “SENSITIVE INFORMATION”

The Massachusetts Technology Collaborative, the Massachusetts Broadband Institute, the Massachusetts e-Health Institute, and John Adams Innovation Institute (collectively referred to herein as “Mass Tech Collaborative”) are subject to the requirements concerning disclosure of public records under 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 Mass Tech Collaborative. As a result, any information submitted to Mass Tech Collaborative by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the “Submitting Party”) is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, “public records” do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including Mass Tech Collaborative’s enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by Mass Tech Collaborative that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the “Trade Secrets Exemption”).

IT IS MASS TECH COLLABORATIVE’S EXPECTATION AND BELIEF THAT THE OVERWHELMING PERCENTAGE OF DOCUMENTS IT RECEIVES FROM A SUBMITTING PARTY DOES NOT CONTAIN ANY INFORMATION THAT WOULD WARRANT AN ASSERTION BY MASS TECH COLLABORATIVE OF AN EXEMPTION FROM THE PUBLIC RECORDS ACT. SUBMITTING PARTIES SHOULD THEREFORE TAKE CARE IN DETERMINING WHICH DOCUMENTS THEY SUBMIT TO MASS TECH COLLABORATIVE, AND SHOULD ASSUME THAT ALL DOCUMENTS SUBMITTED TO MASS TECH COLLABORATIVE ARE SUBJECT TO PUBLIC DISCLOSURE WITHOUT ANY PRIOR NOTICE TO THE SUBMITTING PARTY AND WITHOUT RESORT TO ANY FORMAL PUBLIC RECORDS REQUEST.

In the event that a Submitting Party wishes to submit certain documents to Mass Tech Collaborative and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party’s initial submission of documents to Mass Tech Collaborative, the Submitting Party must provide a cover letter, addressed to Mass Tech Collaborative’s General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents’ disclosure, and a specific start date and end date within which the claimed exemption applies. 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. At the time of the Submitting Party’s initial submission of documents to Mass Tech Collaborative, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as “Sensitive Information.” It is the Submitting Party’s responsibility and obligation to ensure that all such documents are sufficiently identified as “Sensitive Information,” and Submitting Party’s designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

INFORMATION SUBMITTED TO MASS TECH COLLABORATIVE 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.

3. Documents that are not accompanied by the written notification to Mass Tech Collaborative's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to Mass Tech Collaborative 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.
4. At the time Mass Tech Collaborative receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate Mass Tech Collaborative staff. By submitting a grant application, request for response, or any other act that involves the submission of information to Mass Tech Collaborative, the Submitting Party certifies, acknowledges and agrees that (a) Mass Tech Collaborative's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by Mass Tech Collaborative that such documents fall within the Trade Secrets 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) Mass Tech Collaborative is not liable under any circumstances for the subsequent disclosure of any information submitted to Mass Tech Collaborative by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or Mass Tech Collaborative was negligent in disclosing such documents.
5. In the event that Mass Tech Collaborative receives an inquiry or request for information submitted by a Submitting Party, Mass Tech Collaborative shall 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 previously designated as "Sensitive Information" in strict accordance with this Policy, the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and, if not already submitted, that a formal, written public records request must be submitted by the requesting party to Mass Tech Collaborative's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of Mass Tech Collaborative's receipt of the public records request, and Mass Tech Collaborative may, but shall not be required to provide Submitting Party an opportunity to present Mass Tech Collaborative with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

THE GENERAL COUNSEL IS THE SOLE AUTHORITY WITHIN MASS TECH COLLABORATIVE FOR MAKING DETERMINATIONS ON THE APPLICABILITY AND/OR ASSERTION OF AN EXEMPTION TO THE PUBLIC RECORDS ACT. NO EMPLOYEE OF MASS TECH COLLABORATIVE OTHER THAN THE GENERAL COUNSEL HAS ANY AUTHORITY TO ADDRESS ISSUES CONCERNING THE STATUS OF "SENSITIVE INFORMATION" OR TO BIND MASS TECH COLLABORATIVE IN ANY MANNER CONCERNING MASS TECH COLLABORATIVE'S TREATMENT AND DISCLOSURE OF SUCH DOCUMENTS.

FURTHERMORE, THE POTENTIAL APPLICABILITY OF AN EXEMPTION TO THE DISCLOSURE OF DOCUMENTS

DESIGNATED BY THE SUBMITTING PARTY AS "SENSITIVE INFORMATION" SHALL NOT REQUIRE MASS TECH COLLABORATIVE TO ASSERT SUCH AN EXEMPTION. MASS TECH COLLABORATIVE'S GENERAL COUNSEL RETAINS THE SOLE DISCRETION AND AUTHORITY TO ASSERT AN EXEMPTION, AND HE MAY DECLINE TO EXERT SUCH AN EXEMPTION IF, WITHIN HIS DISCRETION, THE PUBLIC INTEREST IS SERVED BY THE DISCLOSURE OF ANY DOCUMENTS SUBMITTED BY THE SUBMITTING PARTY.

8. Mass Tech Collaborative shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that Mass Tech Collaborative determines that the subject documents are exempt from disclosure, the requesting party may seek review of Mass Tech Collaborative's determination before the Supervisor of Public Records, and Mass Tech Collaborative shall notify the Submitting Party in writing in the event that the requesting party pursues a review of Mass Tech Collaborative's determination.
10. In the event the requesting party pursues a review of Mass Tech Collaborative's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders Mass Tech Collaborative to disclose such documents to the requester, Mass Tech Collaborative 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.
11. In the event that Mass Tech Collaborative determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, Mass Tech Collaborative shall not assert an exemption, Mass Tech Collaborative 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 MASS TECH COLLABORATIVE SHALL REQUIRE A SIGNED CERTIFICATION THAT SUBMITTING PARTY ACKNOWLEDGES, UNDERSTANDS AND AGREES WITH THE APPLICABILITY OF THE FOREGOING PROCEDURES TO ANY DOCUMENTS SUBMITTED TO MASS TECH COLLABORATIVE 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.

MASS TECH COLLABORATIVE POLICY AND PROCEDURES FOR HOLDING PARTIES IN POSSESSION OF SENSITIVE INFORMATION

From time to time, consultants, contractors, grantees, as well as other third parties interacting with Mass Tech Collaborative (collectively, the "Holding Party") may receive, have access to or create confidential, proprietary or otherwise sensitive information regarding Mass Tech Collaborative, its activities, its employees and/or third parties, such as applicants, consultants, grantees, recipients or respondents under Mass Tech Collaborative programs, which information is not generally known by or disseminated to the public as a matter of course. Information of this nature is sometimes referred to in this Agreement as "Sensitive Information." Mass Tech Collaborative expects all Holding Parties to maintain the highest degree of professionalism, integrity and propriety with respect to Sensitive Information at all times. In addition, the Massachusetts Conflict of Interest Statute, M.G.L. Chapter 268A, prohibits current and former state employees (defined in the statute to include regular full-time and part-time employees, elected or appointed officials and independent contractors) from improperly disclosing certain categories of Sensitive Information or using it to further their personal interests, and the Massachusetts Fair Information Practices Act, M.G.L. Chapter 66A, contains numerous legal requirements aimed at protecting "personal data" from improper disclosure.

Mass Tech Collaborative's policy regarding a Holding Party's possession of Sensitive Information has two key elements:

1. Holding Parties should not request or accept any more Sensitive Information -- whether of a business or personal nature -- than is reasonably necessary under the circumstances; and
2. In the absence of a specific legal requirement compelling disclosure of Sensitive Information in a particular instance, all Holding Parties are expected to take appropriate measures to safeguard such information from improper use and disclosure.

Because the relevant legal requirements and the nature and scope of the information in question can create uncertainty, **HOLDING PARTIES ARE URGED TO CONFER WITH MASS TECH COLLABORATIVE'S GENERAL COUNSEL IF THEY HAVE ANY QUESTIONS ABOUT CONFIDENTIALITY, THE SCOPE OR PROPER TREATMENT OF SENSITIVE INFORMATION, OR MASS TECH COLLABORATIVE'S POLICIES OR PROCEDURES WITH RESPECT TO SUCH TOPICS.** Holding Parties shall not substitute their own judgment for that Mass Tech Collaborative's General Counsel in deciding whether particular information is innocuous data or Sensitive Information that should be handled with care, or the advisability or sufficiency of safeguards with respect to particular types of information. **FAILURE TO COMPLY WITH THE POLICIES AND PROCEDURES RELATING TO SENSITIVE INFORMATION AND MASS TECH COLLABORATIVE'S OBLIGATIONS PURSUANT TO THE PUBLIC RECORDS ACT AND OTHER LEGAL DISCLOSURE REQUIREMENTS CAN RESULT IN IMMEDIATE TERMINATION OF THIS AGREEMENT, AND/OR POTENTIAL LEGAL LIABILITY.**

IT SHOULD BE NOTED THAT THE OBLIGATIONS UNDER THESE POLICIES CONTINUE EVEN AFTER MASS TECH COLLABORATIVE'S RELATIONSHIP WITH A PARTICULAR APPLICANT, RECIPIENT OR OTHER THIRD PARTY ENDS OR THIS AGREEMENT TERMINATES.

In the absence of a specific legal requirement necessitating disclosure of particular information in a specific instance, Holding Parties are expected to protect Sensitive Information from improper use and disclosure at all times. The following are examples of the kinds of protective procedures that should be followed:

- **Limited Communication to Mass Tech Collaborative Personnel:** Sensitive Information should not be communicated to other Mass Tech Collaborative employees or consultants, except to the extent that they need to know the information to fulfill their Mass Tech Collaborative mission-related responsibilities and their knowledge of the information is not likely to result in misuse or a conflict of interest.

- **Limited Communication to Non-Mass Tech Collaborative Personnel:** Sensitive Information should not be communicated to anyone outside Mass Tech Collaborative, including family members, except to the extent outside parties need to know the information in order to provide necessary services to Mass Tech Collaborative, its Holding Parties or as otherwise directed by the General Counsel to comply with legal requirements necessitating disclosure, such as proper requests under the Public Records Act.
- **Notification of Confidentiality:** When Sensitive Information is communicated to any person outside Mass Tech Collaborative, the individual receiving such information should be informed of its sensitive nature and the need to safeguard such information from improper use and disclosure. When Sensitive Information is communicated to parties inside Mass Tech Collaborative, the procedures set forth in Attachment C-1 are applicable. Mass Tech Collaborative may require that Holding Parties execute a confidentiality agreement that has either been provided or approved by the General Counsel before Sensitive Information is disclosed to them.
- **Mass Tech Collaborative Use Only:** Sensitive Information should only be used for Mass Tech Collaborative purposes. Under no circumstances may a present or former Holding Party "trade on" such information or otherwise use it, directly or indirectly, for personal gain or for the benefit of any party other than the owner of such information.
- **Prevention of Eavesdropping, Unauthorized Viewing, etc.:** Sensitive matters should not be discussed in restaurants, on public transportation or in other public places or in locations, such as hallways, elevators and building lobbies, where unauthorized individuals could overhear the discussion. Similarly, Sensitive Information should not be exchanged or discussed via cordless or cellular phones or similar "non-secure" communication lines. Speaker phones can amplify conversations and should be used with care when discussing Sensitive Information. Common sense precautions should also be taken with respect to Sensitive Information in written form, such as stamping or marking such documents "CONFIDENTIAL" to flag them for special handling, limiting access to files to those with an Mass Tech Collaborative -related "need to know," locking documents that contain Sensitive Information in desk drawers or file cabinets when you are away from your desk, carefully limiting the circumstances in which (and exercising appropriate care when) such materials leave Mass Tech Collaborative's office, delivering sensitive materials to others in sealed envelopes, and limiting the addressees and "cc's" of letters, memoranda, emails and other communications containing Sensitive Information to those individuals who reasonably need to see such communications. Data stored on personal computers, and floppy disks, c/d roms and other electronic media containing Sensitive Information, should be properly secured to keep them from being accessed by unauthorized individuals. Documents containing Sensitive Information that are sent to printers should be picked up promptly.
- **Communications With the Public; Compulsory Legal Process:** All contacts with the media and all speeches or other oral or written public statements made on behalf of Mass Tech Collaborative, or concerning its activities, applicants or recipients, must be cleared in advance by Mass Tech Collaborative's Chief of Staff. In speeches and statements *not* made on behalf of Mass Tech Collaborative, proper care should be taken to avoid any implication that Mass Tech Collaborative endorses the views expressed. All disclosure requests under the Public Records Act or in the form of requests for discovery, subpoenas, court or administrative orders or the like must also be referred to the General Counsel for appropriate handling.

QUESTIONS CONCERNING WHETHER A GIVEN TYPE OF INFORMATION OR DOCUMENT IN A HOLDING PARTY'S POSSESSION IS A "PUBLIC RECORD," AND THUS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT, OR IS COVERED BY AN AVAILABLE EXEMPTION, SHOULD BE DIRECTED TO MASS TECH COLLABORATIVE'S GENERAL COUNSEL. NO OTHER MASS TECH COLLABORATIVE EMPLOYEE IS AUTHORIZED TO MAKE SUCH ASSESSMENTS OR TO PROVIDE ANY GUIDANCE TO A HOLDING PARTY CONCERNING POTENTIAL DISCLOSURE OF ANY INFORMATION PROVIDED TO OR IN POSSESSION OF A HOLDING PARTY.

IN ADDITION, ALL COMMUNICATIONS SEEKING INSPECTION OR OTHER DISCLOSURE OF MATERIALS IN A HOLDING PARTY'S POSSESSION UNDER THE PUBLIC RECORDS ACT MUST BE REFERRED PROMPTLY TO THE GENERAL COUNSEL. SIMILARLY, ALL SUBPOENAS AND OTHER LEGAL PROCESS DOCUMENTS REQUESTING OR SEEKING TO COMPEL DISCLOSURE OF MATERIALS IN A HOLDING PARTY'S POSSESSION MUST BE DELIVERED OR PROMPTLY FORWARDED TO THE GENERAL COUNSEL UPON RECEIPT.