

CANDIDATE BRIEFING

CONFIDENTIALITY, NDAs AND ECONOMIC DEVELOPMENT

Protecting commercial information while maintaining public accountability

Prepared for municipal candidates, members and the public | September 29, 2026

The central distinction

Businesses may need to share sensitive information before deciding whether to invest. A non-disclosure agreement (NDA) establishes confidentiality obligations; it does not itself approve a development, authorize an incentive or commit taxpayer money. Municipal disclosure and approval requirements still apply.^{1,10}

1. Why companies seek confidentiality

Site selection can reveal a company's strategy before it has secured land, financing, customers or internal approval. Invest Ontario explicitly offers confidential province-wide site searches alongside cost information and permit coordination. Confidentiality is an established investment-support practice, not evidence by itself that a proposal is improper.^{2,3}

Commercial reason	What premature disclosure can affect
Competitive strategy	New products, capacity, customer relationships or entry into a market may become visible to competitors before the company is ready to act. ³
Land and negotiating leverage	Revealing a preferred property, urgency or corporate identity can weaken bargaining over real estate and other commercial terms. ⁴
Employees and business relationships	A preliminary study can be mistaken for a decision, creating uncertainty for employees, suppliers, customers and investors. ^{3,5}
Testing alternatives	The company may be comparing an existing-site expansion, a new location, a partnership or no investment. Confidential assessment allows those alternatives to be investigated before expectations become fixed. ⁵
Technical and financial information	Feasibility work may disclose processes, designs, forecasts or commercially valuable data. Trade-secret protection depends in part on maintaining secrecy and controlling access. ⁶
Securities-market obligations	A public company may be handling material undisclosed information. An NDA does not replace the separate rules on timely disclosure, tipping and insider trading. ⁷

An inquiry is not a commitment. A site visit is not an investment decision. An announcement is not the same as an operating facility.

2. What an NDA does - and does not do

The Canadian Intellectual Property Office describes an NDA as a contract in which one or more parties agree to keep specified information confidential. Depending on its wording, it can define the information covered, permitted purpose, authorized recipients and limits on further use or disclosure. Secure handling is still necessary.¹

Information protection	A separate decision or requirement
Sharing technical and financial details for an agreed assessment.	Whether the project is feasible and whether the business will proceed.
Setting boundaries on who receives and uses sensitive information.	Whether a municipality has authority to approve a transaction, provide support or incur costs.
Protecting negotiations and commercially sensitive material.	Whether a meeting can be closed or a record withheld under the applicable legislation.

Confidential treatment does not always require signing the company's preferred NDA. NRC IRAP, for example, protects sensitive business information through statutory and operational safeguards, but says it cannot accept confidentiality or destruction clauses that conflict with federal access and records laws. That is a federal example, not a rule that municipalities cannot sign NDAs.⁸

Publicly traded companies: an additional safeguard

Canadian securities guidance permits some disclosures in the necessary course of business, including communications with lenders, advisers and government agencies. The test is case-specific. An NDA alone does not make selective disclosure lawful, permit trading on undisclosed material information or justify delaying a required disclosure.⁷

3. How confidentiality connects to economic development

Investment assessment involves matching a business's requirements with a location's actual capacity. Invest Ontario links confidential searches with information on costs and approvals. In CK, the municipal concierge service provides a single point of contact and access to departmental expertise for new and existing businesses.^{2,9}

The practical implication is that the right specialists need enough information to test a proposal: electrical demand, wastewater characteristics, truck movements, site requirements, workforce needs and delivery timing. Protecting sensitive details can enable that examination without making the entire commercial plan public.

Illustrative CK scenario - not a reported project

A food processor is assessing an expansion linked to a potential customer contract. Utility and municipal specialists need its technical requirements; a lender needs credible costs and timelines. The company does not yet wish to identify the customer or product to competitors. Controlled information sharing can support these assessments, while any municipal expenditure, planning decision or financial commitment follows its own approval and disclosure requirements.

Confidentiality can make due diligence possible. It does not replace due diligence, verify an investor's claims or guarantee approval.

4. Ontario municipalities: two different legal questions

An NDA is not a blanket exemption

Whether Council may discuss information in a closed meeting and whether a record may be withheld from an access request are separate questions under different legislation. Neither is settled simply by labelling a document confidential.^{10,11}

A. Can the meeting be closed?

Under section 239 of the Municipal Act, 2001, meetings are generally open. Relevant exceptions can include proposed municipal land transactions, qualifying confidential third-party commercial information and negotiating positions. Each exception has conditions; economic development is not a standalone exception.¹⁰

Before a closed session, a public resolution must identify the general nature of the matter. Proceedings must be recorded. Voting is generally restricted to procedural matters or directions and instructions in an otherwise lawfully closed meeting. The Ontario Ombudsman also recommends reporting back publicly as far as the subject permits.¹⁰

An Ombudsman review of a 2016 Oshawa meeting illustrates the distinction: the existence of an NDA did not make the education-or-training exception applicable to a discussion that materially advanced Council business. The correct statutory exception must fit the actual discussion.¹³

B. Can a municipal record be withheld?

Section 10 of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) protects qualifying third-party information when all parts of the legal test are met:^{11,12}

Part of the test	What must be established
Type of information	The record reveals a trade secret or scientific, technical, commercial, financial or labour-relations information.
Supplied in confidence	The information was supplied to the institution in confidence, explicitly or implicitly.
Reasonably expected harm	Disclosure could reasonably be expected to cause a harm specified in the section, such as significant prejudice to competitive position or interference with negotiations.

The Information and Privacy Commissioner explains that negotiated contract terms are generally mutually generated, rather than supplied by the business, although exceptions apply. A signed municipal agreement therefore is not automatically confidential. Other exemptions may require separate assessment.¹¹

Ontario's guidance also identifies protections under MFIPPA section 11 for certain institutional economic interests and negotiating strategies. These can protect the municipality's position, not just the company's, but require the applicable legal conditions to be met.¹²

Timing and disclosure

A project announcement does not automatically expose every underlying trade secret. Equally, a preferred announcement date does not override a legal disclosure obligation. The assessment concerns the particular information and applicable rules, not a permanent promise of secrecy for the whole project.^{6,7,11}

A confidentiality label is a claim to be assessed - not a substitute for the legal test.

5. The connection to budgets and infrastructure

The earlier infrastructure and finance briefings distinguish investment opportunities from municipal commitments. Confidential commercial assessment and public-sector accountability involve different questions. The framework below illustrates that distinction; it does not classify any item as automatically private or public.

Commercial assessment	Municipal accountability question
Proposed production process and capacity.	What infrastructure is required, who pays, and what future operating costs follow?
Unresolved financing or customer commitments.	What exposure remains if the project changes, is delayed or does not proceed?
Property options and prices under negotiation.	What authority, valuation and approval process apply to any municipal transaction?
Technical information requiring protection.	What can be reported about public costs, obligations, safeguards and results?

The relevant distinction is not between supporting investment and informing residents. It is between information legitimately protected under the rules and information the public is entitled to receive. Public spending and agreement terms require their own disclosure assessment; an NDA cannot determine the outcome by itself.^{11,12}

6. Council, the Mayor, staff and the Chamber

Council and the Mayor: Confidential material may be necessary for oversight, but meeting rules still apply. The authority to receive information is distinct from authority to approve a project or make a commitment. Public communication can distinguish what is being assessed from what has actually been decided.¹⁰

Municipal staff and specialist advisers: Operational controls can identify the file lead, permitted recipients and purpose; limit circulation; secure records; and review disclosure obligations with legal and records officials. These controls complement, rather than displace, oversight and statutory requirements.^{8,14}

The Chamber and community partners: A business-authorized introduction to a lender, educator or municipal specialist need not authorize wider circulation of its plans. Applied to Chamber work, the same need-to-know principle allows recurring barriers to be discussed without unnecessarily identifying a confidential business example.¹⁴

Questions for reviewing an investment file

What information needs protection, and why? Who needs access for the assessment? What remains undecided? Which municipal authority or disclosure rule applies? What taxpayer exposure is proposed? What can be communicated publicly now, and when should confidentiality be reviewed?

Bottom line

Confidentiality supports the exchange of information needed to assess investment. Accountability governs the use of municipal authority and public resources.

An NDA protects information. It does not approve a project, commit taxpayer money or remove public oversight.

General information, not legal advice. Specific NDAs and disclosure decisions require review by municipal legal counsel and the appropriate records and governance officials.

Sources and References

Superscript numbers refer to the sources below. Source titles are linked. Official guidance supplies the legal and public-sector framework; site-selection advisers supply the commercial-practice perspective. Practitioner examples from other jurisdictions do not establish Ontario municipal authority.

1. **Canadian Intellectual Property Office.** [Protect new ideas and creations.](#) Confidentiality agreements and information-access controls; updated March 18, 2021.
2. **Invest Ontario.** [How we help.](#) Confidential site searches, development-cost information, local expertise and permit coordination.
3. **Deloitte.** [12 mistakes to avoid in the site selection process.](#) Item 9: confidentiality and premature disclosure to employees, competitors and other parties.
4. **Site Selection Group, King White.** [Part 2: 15 Mistakes to Avoid During the Site Selection Process.](#) April 25, 2016; item 3 on confidentiality and negotiating leverage.
5. **BLS & Co.** [How Companies Can Create a Winning Site Selection Process.](#) Commercial guidance on evaluating alternatives and managing stakeholder communications.
6. **Canadian Intellectual Property Office.** [Trade secrets.](#) Commercial value, confidentiality agreements and restrictions on access; updated July 9, 2020.
7. **Canadian Securities Administrators.** [National Policy 51-201: Disclosure Standards.](#) Consolidation effective June 9, 2023, hosted by the Alberta Securities Commission; sections 2.2 and 3.1-3.5.
8. **National Research Council Canada.** [Confidentiality of business information - IRAP.](#) Federal safeguards and conflicts between private NDA clauses and statutory duties; updated December 20, 2023.
9. **Municipality of Chatham-Kent.** [Relocate & Expand in CK.](#) Business-concierge service and access to municipal expertise.
10. **Ombudsman Ontario.** [Open Meetings - Guide for Municipalities.](#) 2024 guide; Municipal Act, 2001, section 239, exceptions, resolutions, voting and records.
11. **Information and Privacy Commissioner of Ontario.** [Interpretation Bulletin: Third Party Information.](#) March 2024; MFIPPA section 10, three-part test and negotiated contractual information.
12. **Government of Ontario.** [Freedom of Information and Protection of Privacy Manual, Chapter 5: Exemptions and Exclusions.](#) Third-party information and institutional economic interests, including MFIPPA sections 10 and 11.
13. **Ombudsman Ontario.** [Open Meetings Digest: Education or training.](#) City of Oshawa, July 19, 2016: an NDA did not make the education-or-training exception applicable.
14. **Canadian Intellectual Property Office.** [Protect IP outside Canada: 2. Minimize disclosure.](#) Need-to-know access, disclosure timing, access records and secure handling; updated March 18, 2021.