

**Confidential**

**Confidentiality Policy**



## **Confidentiality Policy**

**Effective Date: 2022-12-07**

Document Classification:

**Confidential**

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# Confidential

## Confidentiality Policy

### Document Versions

Version	Revision Date	Prepared / Revised by	Business Unit	Status
1.1	June 2009	GEPF	Legal and Compliance	Approved
1.2	November 2014	GEPF	Secretariat	Approved
1.3	December 2014	GEPF	Secretariat	Approved
1.4	August 2015	GEPF	Secretariat	Approved
1.5	November 2016	GEPF	Secretariat	Approved
1.6	August 2017	GEPF	Secretariat	Approved
1.7	November 2018	GEPF	Secretariat	Approved
1.8	November 2019	GEPF	Secretariat	Draft
1.9	November 2022	GEPF	Secretariat	Draft

### Document Reference Library

Document File Name	Context and Relevance
Confidentiality Policy	Confidentiality of all documentation and communication

### Business Areas Impacted by this Policy

Name Business Unit / Area	Context and Relevance
GEPF	Confidentiality of all documentation and communication

### Glossary of Terminology

Abbreviation/Terminology	Description
"Board"	The Board of Trustees of the Government Employees Pension Fund
"Confidential Information"	Any information howsoever recorded, stored or manifested, whether orally, written, machine-readable, demonstrative, graphic or other form, which is unpublished, not available to the general public or trade, and which is maintained as personal, confidential and proprietary information by the Fund for any reason, including, without limitation, regulatory, business, competitive, contractual or member relations reasons, or <ul style="list-style-type: none"><li>- which is marked as "confidential" (or similar legend) determined by the Fund to be confidential</li><li>- which if disclosed would violate a person's right to privacy</li><li>- which is declared to be confidential in terms of any law, including, but not limited to information contemplated in the Promotion of Access to Information Act</li></ul>
"Confidentiality Policy"	This Confidentiality Policy and such alteration hereof as may at any time be in force. "Policy" has a corresponding meaning
"Fund"	The Government Employees Pension Fund
"Fund employee"	All employees employed by the Fund
"GEP Law"	The Government Employees Pension Law, 1996

# Confidential

## Confidentiality Policy

Abbreviation/Terminology	Description
"Privileged Information"	All information of any nature whatsoever: <ul style="list-style-type: none"><li>- which is determined by the Fund to be privileged,</li><li>- which is declared to be privileged or secret in terms of any law, including, but not limited to information contemplated in the Promotion of Access to Information Act</li></ul>
"Recipient"	In relation to any particular item of Confidential Information, the party which (or whose Associate) receives or otherwise obtains such information
"Rules"	Rules of the Government Employees Pension Fund
"Service Provider"	Includes an administrator, auditor, provider of risk benefits, provider of short-term insurance, brokerage or any other entity contracted by the Fund to provide goods or services which, for this purpose, includes but is not limited to the management of any assets of the Fund whether in the form of a mandate or an insurance policy
"Trustee"	A person designated or elected as a member of the Board in terms of the Government Employees Pension Fund Rules and includes a Substitute Trustee as contemplated in the Rules as well as independent specialist trustees appointed to serve on Board Committees.

### 1. Policy purpose and scope

The primary objective of this Policy is to assist the Fund in building and protecting the integrity and reputation of the Fund by establishing the necessary framework, principles and guidelines to be followed by the Trustees of the Fund with regards to the protection of the Fund's information. This Policy also aims to assist Trustees in the execution of their duty to keep members, beneficiaries and Fund information confidential and protect Confidential Information from dissemination and use by any unauthorised persons.

The principles outlined in this Policy apply to all Trustees, Substitute Trustees and employees of the Fund.

### 2. Values and Principles

The Confidentiality Policy recognises the constitutional right of privacy of all South Africans. It also embraces the democratic values of human dignity, freedom and equality. It is against these constitutional rights and values that this Policy wishes to pursue a combination of value-based and rule-based approaches to managing confidential and privileged information of the Fund, members, beneficiaries and pensioners. This integrative approach is beneficial to all Trustees essentially because of the balance created between ethical aspirations and legal requirements.

### 3. Fiduciary Duties

This Confidentiality Policy is based on the following legal principles:

The Trustees of the Fund have fiduciary duties, amongst others, of care and good faith and to protect the interests of the members, beneficiaries and the Fund. These duties arise when the Trustees enter into a fiduciary relationship with the Fund, and may even continue after the relationship has ended. Part of the fiduciary duty of care is the duty to protect the confidences of the Fund.

### 4. Duties and Obligations of the Trustees

The Board of Trustees of the Fund accepts that information in respect of the Fund belongs to the Fund. The Trustees recognise that in the course of exercising their duties, they will be in possession of, or have access to, certain Fund information which must be treated as confidential. The Rules provide that the Trustees should "adhere to the principles of privileged information and confidentiality", and shall accordingly:

- *use Confidential Information for the purpose of fulfilling their duties and obligations as Trustees of the Fund;*

- *not to disclose Confidential Information about the operations of the Board or the Fund unless authorised to do so by the Board; and*
- *not to disclose Confidential Information to any person unless such a person has a lawful right to such information.*

### 5. Access to Privileged/Confidential Information

Trustees may access Privileged/Confidential Information belonging to the Fund provided that it is necessary for the purpose of fulfilling their duties as Trustees. The duties of the Trustees are set out in the Rules of the Fund. In the exercising of these duties the need to access Confidential and/or Privileged Information may arise, for example to protect the interest of a member. A request for such information should be directed to the Principal Executive Officer of the Fund and reported by the Trustee who requires that information, to the relevant subcommittee of the Board.

The trustees undertake to ensure that they remain up to date with any new confidentiality requirements that may be imposed by the FSCA, relevant to pension funds and/or the trustees of such funds.

### 6. Access to Information in terms of the Promotion of Access to Information Act

The Promotion of Access to Information Act, 2000 (**PAIA**) has been formulated to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information as enshrined in the Constitution.

PAIA establishes voluntary and mandatory procedures to give effect to the constitutional right to information in a manner that enables persons to obtain records of public and private bodies as swiftly, inexpensively and effortlessly as possible. In keeping with the requirements of PAIA, the Fund has established a PAIA Manual. Any requests for information, received by the Fund from third parties, will be managed in accordance with the provisions of the Fund's PAIA Manual.

In the interests of clarity, any requests for confidential/privileged information by Trustees shall be dealt with in accordance with the provisions of clause 5 above; and Information by a third party shall be dealt with in accordance with the provisions of the Fund's PAIA Manual.

### 7. Confidentiality Guidelines and Principles

Best practice requires that the Trustees of the Fund should:

- maintain the confidentiality of Confidential Information and not disclose or divulge to any third party in whole or in part any of the Confidential Information;
- ensure that the Fund's service providers, agents and professional advisors to whom any disclosure of any of the Confidential Information is made are bound by the obligations in this Policy as if they had separately bound themselves to the obligations in this Policy;
- not use any of the Confidential Information for any purpose except for the purpose of fulfilling their obligations to the Fund; and
- should the Governance and Legal Committee so request, Trustees will be required to immediately return to the Fund specified Confidential Information (together with all copies) in the Trustees' possession or under their control without keeping any record, copies or extracts thereof, destroy all notes, memoranda, copies to the extent such documents reflect any Confidential Information and delete all Confidential Information (and all copies) on any computer, word processor or other device containing such information in their possession or under their control (and such destruction and deletion shall be confirmed to the Governance and Legal Committee in writing).

Notwithstanding the return of the Confidential Information, the Trustees will continue to be bound by obligations of confidentiality and other obligations in terms of this Policy even after the term(s) of office of the Trustee/s have ended.

### 8. Confidentiality Guidelines and Principles

The Confidential Information will only be disclosed, with the consent of the person to whom that information relates, to:

- the Trustees, employees, Service Providers and agents of the Fund that are required to have access to the Confidential Information for the purpose within the normal functions of their business operations in relation to the Fund;
- to the extent necessary, to external and internal auditors of the Fund for purposes of performing external and internal audit functions of the Fund; or
- to a party other than employees, service providers, agents or auditors of the Fund with the Board's prior written consent.

### 9. Excluded Information

The obligations of the Trustee pursuant to the provisions of this Policy shall not apply to any information that:

- is known to or in the possession of the Recipient prior to disclosure thereof by the Trustee;
- the Recipient is able to show, at the time of disclosure, that the information is already in the public domain or becomes publicly known, other than through acts or omission or breach of this Policy by the Recipient;
- is acquired from sources independently of the Trustee or the Fund by the Recipient in circumstances that do not amount to a breach of the provisions of this Policy;
- is disclosed to the Recipient to satisfy the order of a court of competent jurisdiction or at the request of any regulatory or supervisory authority having jurisdiction over the Fund or to comply with provisions of any applicable law or regulations in force from time to time;
- is disclosed to the Recipient pursuant to the prior written authorisation from the Board.

### 10. Classification of Information

Considering these principles, the following procedures shall be used to protect the confidences of the Fund.

Each document provided to the Trustees in connection with the Fund shall be classified under one of these three categories:

#### 10.1 Privileged Information

Items classified as "Privileged" shall not in any way be shared with anyone except members of the Board of Trustees and those employees or Service Providers of the Fund authorised by the Board to receive the information. Sharing in this context assumes that the person to whom the information relates has consented to the sharing, and covers any action resulting in the items coming to the knowledge of a person other than a trustee, and include, without limitation, photocopies, discussion on the content of the items, emails, displaying on a computer screen, access to printed documents etc.

Examples include materials containing attorney-client communications; personnel and disciplinary matters; background/position/problem documents; plans, budgets and commentaries prepared for Committees; members, beneficiaries and pensioners personal records; deliberations with respect to tenders and annual reports which have not been tabled in Parliament.

### 10.2 Confidential Information

Items classified as "Confidential" shall not in any way be shared with anyone except members of the Board of Trustees and those employees or Service Providers of the Fund authorised by the Board to receive the information.

Sharing in this context assumes that the person to whom the information relates has consented to the sharing, and covers any action resulting in the items coming to the knowledge of a person other than a trustee, and include, without limitation, photocopies, discussion on the content of the items, emails, displaying on a computer screen, access to printed documents etc.

Examples include final Committee and Board agendas; Committee and Board minutes; Board deliberations; tender records; draft agendas; draft policies and procedures; internal audit reports; system documentation; project management records; recruitment and selection records; contracts and agreements; salary details of employees; general correspondence; accounting records; investment records and financial disclosures in terms of the Conflicts of Interest Policy.

### 10.3 Unrestricted/Unclassified Information

Items that are unclassified or classified as "Unrestricted" have no limitation on distribution or discussion. Trustees, employees, and Service Providers of the Fund must use good judgment and discretion when handling such information, keeping the best interests of the Fund uppermost.

Examples include Board approved policies and procedures, (though they may have been classified as "Confidential" at an earlier stage), Annual Reports and Financial Statements after they have been tabled in parliament, members and pensioners newsletters and booklets, Trustee booklets, Rules of the Fund and press releases.

When items are prepared for distribution by the Fund, the secretariat may classify each item. In some instances, a particular page or attachment may be classified differently from the rest of the item.

An item may be classified as "Privileged" or "Confidential" until a specific time, after which the item becomes "Unrestricted" and may be openly discussed. All those receiving such an item in confidence shall observe the restriction until the prescribed time.

If a Trustee receiving "Privileged Information" or "Confidential Information" believes it would serve the best interests of the Fund, members, beneficiaries or pensioners to disclose the matter to, or discuss it with someone outside of the restricted group, he or she must obtain the written approval of the Board to do so.

The Board of Trustees must take a resolution to change a classification made by the Secretariat or the Governance and Legal Committee. In all cases, the Board has the ultimate responsibility for establishing the level of confidentiality to be maintained, observing the requirements of this Policy and the applicable law.

In addition to a "Privileged" or "Confidential" classification, an item or a portion of an item may be marked "Confidential Attorney-Client Privilege" where the material contains or reflects a matter communicated between the Fund and legal counsel in confidence. Disclosing such matters to others may result in a waiver of privilege, causing the Fund to lose the protection of the privilege in the event of litigation.

Specifics of Board deliberations, including how individual Trustees voted, shall be "Confidential." If a Trustee wishes that his/her vote on an "Unrestricted" item to be disclosed, that vote may be made "Unrestricted."

Any breach of the Confidentiality Policy set forth here shall be immediately reported to the Governance and Legal Committee.

The Rules of the Fund, Annual Reports, Valuation Reports and other records of the Fund open to inspection by members of the Fund under the GEP Law and the Rules of the Fund shall be regarded as "Unrestricted" materials.

### **11. Obligation to Disclose Confidential Information**

In the event that any Trustee is required by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, the Trustee (and without breaching any legal or regulatory requirement) where reasonably practicable, shall give prompt notice in writing to the Governance and Legal Committee of the requirement to make such disclosure, and (if practicable) disclose such Confidential Information in a manner reasonably designed to preserve its confidential nature.

### **12. Conversations in Public Places**

Trustees and employees must exercise good judgment and care at all times to avoid unauthorised or improper disclosures of Confidential Information. Conversations in public places, such as restaurants, elevators, and airplanes, should be limited to matters that do not pertain to information of a sensitive, privileged or confidential nature. In addition, Trustees 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 unauthorised persons.

### 13. Return of Information

Upon termination of office of the Trustee, he/she will return all Confidential Information and Privileged Information. All copies including all documents, computer disks, abstracts, notes, drawings and other papers, programmes and records incorporating or based upon any of the same (by whomsoever prepared) and will certify to the Fund in writing that he/she has not retained any of the Confidential Information or Privileged Information, when called upon to do so.

### 14. Non-compliance with the Confidentiality Policy

Non-compliance with this Policy and the procedures described in it by any Trustee constitutes breach of the code of conduct and ethics and shall subject the Trustee to such sanctions as may be deemed appropriate by the Board.

### 15. Acceptance of the Confidentiality Policy

As part of the Trustee induction each new Trustee shall be required to review a copy of this Policy and to acknowledge in writing that he/she has reviewed the Policy, understands the content and agrees to be bound by it.

### 16. Policy Review and Evaluation

This Policy will be reviewed as and when required, but at least annually.

The Governance and Legal Committee is responsible for implementing, updating and reviewing this Policy.

Any changes to the Policy shall be communicated immediately to all Trustees.

### 17. Interpretation

In the event of any inconsistency between this Policy and the Rules of the Fund, the Rules shall prevail.

### 18. Declaration

Each Trustee is required to sign a declaration as set out in Annexure A to this Policy, certifying that he/she:

- has received a copy of the Confidentiality Policy;
- has read and understood his/her responsibilities in terms of the Policy; and
- agrees to comply with the Policy.

### 19. Policy Approval

~~RECOMMENDED / NOT RECOMMENDED~~



**MR P SNYMAN**  
**CHAIRPERSON: GOVERNANCE AND LEGAL COMMITTEE**  
**DATE: 2022-12-07**

~~APPROVED / NOT APPROVED~~



**MR D MOGOJANE**  
**CHAIRPERSON: BOARD OF TRUSTEES**  
**DATE: 2022-12-07**

***Annexure A***

**Declaration  
Confidentiality Policy**

I, \_\_\_\_\_ hereby declare that I have:

- Received a copy of the Confidentiality Policy;
- Read and understands my responsibilities in terms of the Policy; and
- Agrees to comply with the Policy.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_