

Confidentiality Clauses and Non-Disclosure Agreements

Hacking, identity theft, data breaches, corporate espionage and similar terms are in the news and on social media constantly, making everyone legitimately nervous about privacy. In addition, paparazzi with cameras that can zoom in from long distances and drones that can hover silently mean that even the most remote location can be compromised. Unfortunately, privacy concerns have led many customers in the meeting industry to ask hotels to sign confidentiality clauses or even separate agreements that pose significant risks for the hotel, and that usually do not appropriately address the customer's concerns.

✚ **Hotels generally do not need or want a customer's confidential information to host an event and do not share information about customers with third parties.**

Most hotels host multiple events per day, and of course operate 365 days per year, so it would not be unusual for a large hotel to host well over a thousand events per year. While each customer and each event is important to a hotel, the truth of the matter is that when preparing for or hosting an event, it does not matter to the hotel whether the customer's meeting is about the customer's new product that uses a secret formula, or whether it is a class reunion of college friends getting together to reminisce. The hotel's obligation is to provide the best possible service to the customer regardless of the purpose or content of the event.

If the customer is having a meeting to discuss something proprietary or secret, the hotel does not need or want to know about that information. The hotel wants to know the meeting room set up, the schedule for the event, and what menu the customer would like to have served. Unless the event poses special security issues or the group's activity will post unusual dangers (like using pyrotechnics) the hotel has no need to know anything about the content of the meeting. Further, while some groups worry about "publicity" relating to an event, the general rule is that hotels do not share information about what groups are meeting on property or any details about the customer's event with any third parties unless required by law. Hotels are happy to not post anything about a customer event on reader boards or other public schedules of events if requested.

✚ **Not all information that groups seek to protect is really confidential to the group.**

Some groups ask hotels to agree that information about their attendees is the property of the group, and ask the hotel to delete it after the event is over or take other

steps to protect the information. However, when a person makes a reservation or checks into a hotel and provides personal information to the hotel, that information belongs to the hotel, not the group. The hotel will handle that private information in accordance with the hotel's privacy policy and applicable laws. An international hotel company or even an independently owned hotel cannot handle guest information differently for every group that uses its facilities. It would be logistically, technologically, and financially impossible, and might conflict with legal requirements.

Some groups automatically ask for a confidentiality clause for every event, even when it is not really confidential. A group recently asked a hotel to sign an elaborate non-disclosure agreement for a dinner that the group was going to hold outside next to one of the most popular beaches in the world. Clearly, the event could not be considered confidential when it would be visible to hundreds of guests looking down on it from their hotel rooms and countless other people walking by on the beach!

 **Many confidentiality clauses impose obligations on the hotel but fail to protect the group.**

While hotels do not need or want confidential information from customers, a growing trend in the industry is for customers to routinely request the addition of a confidentiality clause to an event contract or even a separate non-disclosure agreement. These clauses place an obligation on the hotel to protect the group's confidential information, which could expose the hotel to a claim for breach of contract if confidential information is somehow "leaked." Hotels do not want to take on this responsibility for information that they did not want to receive in the first place.

In addition, typical confidentiality clauses do not take into account that information could be disclosed through no fault of the hotel, but it would be virtually impossible for the hotel to prove it was not responsible. For example, a group might pass out information about its new proprietary product in a meeting room, then an attendee could take that information and accidentally leave it in the hotel's restaurant. A competitor of the group could pick up that information and use it. If the hotel signed a confidentiality clause, the group could make a claim against the hotel for the leak of the information because it happened during the meeting, and the hotel would have no way of proving that it was not responsible.

There are many other ways that confidential information could be compromised through no fault of the hotel. An attendee could discard materials in his guest room, and the competitor could "dumpster dive" through the hotel's trash and find it. A competitor could simply stand outside the group's meeting room and listen to the discussion. Smart phones could be used in many ways to capture and share information about the group's event. Because there are so many ways that information can be disclosed in a hotel environment, it is obvious why hotels are reluctant to agree to customer confidentiality requests.

✚ Hotels and customers should work together to protect confidential information.

While hotels are reluctant to sign confidentiality clauses, it does not mean that they don't want to help customers protect sensitive information. The customer and the hotel should discuss what information the customer is trying to protect and then agree on appropriate steps for the parties to take to protect it.

○ The information being discussed in the meeting is confidential.

If the group is concerned about the "secret formula" it will be discussing or the new product that it will be launching, steps should be taken to make sure that third parties do not get that information. Ideas include:

- Placing a shredder in the meeting room so that no information leaves the room.
- Doing a "room sweep" after the event to be sure no information was left behind that could end up in the trash.
- Having extra security outside the room to prevent third party eavesdropping.
- Using room monitors to check in attendees to ensure no unauthorized people enter.
- Prohibiting use of cell phones during the event to prevent unauthorized recording.
- Making sure that presentations containing secret information are not saved by the A/V provider or copying service that prepares handouts.
- Agreeing with the hotel that no staff will enter the room during confidential presentations.

○ The meeting itself or the identity of attendees/speakers is confidential.

If the group does not want information about the fact that the meeting is being held or who will be in attendance to become public, other or additional measures might be considered:

- If the identity or nature of the group or someone that will be involved is secret, ask the hotel to limit disclosure of that information to those personnel with a "need to know." Hotels often have other commitments booked that include prohibitions against booking specific other customers or types of events, so somebody on the hotel staff has to know enough about the potential event or attendees to be able to determine there would be any conflict in booking it.
- The group should carefully choose the venue for the event. It may be more difficult to keep a meeting secret at a busy New York City hotel than at a remote location.
- Have the event be a "buy out" of the hotel. If the group is the only event in house and there are no transient guests, it will be less likely that third parties will come onto the property and become aware of the event.

- If a remote hotel or buyout is not an option, schedule all meetings on one floor of the hotel and arrange to limit elevator or other access to the area to authorized attendees.
- Event information published on the internet should be password protected.
- The group's and hotel's security teams should work together well in advance to develop written security plans so there are no disputes over responsibilities and costs involved in protecting high profile speakers or attendees.

When considering privacy and confidentiality issues, it is important for the hotel and the customer to examine the issues and concerns involved in the particular event being planned, rather to have the hotel sign a confidentiality clause or non-disclosure agreement that may do little or nothing to protect the group, while placing significant potential exposure on the hotel. With a little discussion and negotiation, the parties can reach agreement on protections that are reasonable for both sides.