



PUBLIC RECORDS LAW/TRADE SECRETS

Working with government agencies can be a lot like selling your parrot to the town gossip. Once you've shared a trade secret with the government, you can't be sure who will end up hearing about it.

That's one of the challenges when laws mandating "transparent" government intersect with a business's need to protect trade secrets from its competitors. And, as a result of changes in the interpretation of the Oregon Public Records Law and proposals for tightening the exceptions to that law, the conflict between open government and business imperatives is bound to sharpen.

If you are a government contractor or are required to submit information to a government regulator or licensing agency, you need to be aware of recent trends in the law. We also provide a few tips for survival in an increasingly "transparent" public/private environment.

"Transparency" & "Trade Secrets"

Governments routinely collect sensitive information from businesses and individuals. Trade secrets. License examination test results. The amount of goods and services your business produces. Bank account numbers you provide the government to facilitate transfer of funds. Every document that a government uses is defined by the Oregon's Public Records Law to be a "public record."

The Oregon Legislature has enacted hundreds of exceptions overriding for specific documents the general rule requiring public disclosure of public records. The Oregon Attorney General

The Closely Held Business Team attorneys at Harrang Long Gary Rudnick are committed to serving the needs of business owners in a responsive and proactive manner. They understand the challenges and the opportunities provided by the law in today's business climate, and are focused on the advancement of each client's success in business.

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shares with District Attorneys and the courts the duty of interpreting and applying these exceptions. Until earlier this year, Attorneys General had ruled “trade secrets” submitted by businesses to governments unconditionally protected from public disclosure. Now, according to an interpretation issued by Attorney General John Kroger’s office in April, 2010, governments must publicly disclose information defined to be “trade secrets” by the Uniform Trade Secrets Act whenever “the public interest requires disclosure.” The big change: businesses can’t be as sure as they might have been in the past that their confidential business information will be protected by government agencies.

Look Forward to Increased Transparency

The new ruling is consistent with calls by the Attorney General and several newspapers to limit exceptions to the Public Records Law. Proposals to narrow or repeal exemptions to the Public Record’s Law certainly will be advanced in January, 2011 when the next session of the Oregon Legislature convenes.

Specific proposals to force public disclosure of more public records have not yet been publicly released by the Attorney General or by legislators. The Government Law Department of Harrang Long Gary Rudnick will continue to monitor these developments. In the meantime, businesses can take some action to protect trade secrets from public disclosure.

Tips & Suggestions

- Even if you don’t approve of the trend in the law, consider whether you can turn the Public Records Law to your advantage. Perhaps you’d like to inspect information a competitor has submitted to the government?
- Minimize the volume of trade secrets you submit to the government. Sometimes governments seek more information from businesses than the agency needs to carry out its mission.
- Consider segregating and prominently labeling trade secrets you submit to a government. That puts the recipient on notice of your concern and may help the agency justify rejecting a public records request for your trade secrets.
- Recent and impending changes in the Public Records Law should cause regulated businesses and private partners of governments to consult attorneys to help craft individualized approaches.

Our attorneys know government and closely held businesses. If you have any questions about the Public Records Law and its effect on trade secrets, please contact Randall L. Duncan or David Denecke of our closely held business group, or Pete Shepherd of our Governmental Law Department. We’d be pleased to help.



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