



Ohio Administrative Code Rule 3745-49-03 Public Availability of Information.

Effective: April 2, 2012

(A) A trade secret claim shall be submitted to the agency simultaneously with submission of the specific information, and such request shall be accompanied by sufficient supporting documentation. Failure to make such timely request shall constitute a waiver of the right to prevent public disclosure. If a claimant does not submit the documentation and substantiation required by paragraph (B) of this rule at the time of the submission of the information claimed to constitute a trade secret, the submission shall be considered a public record of the agency.

(B) A claimant shall bear the burden of proving to the satisfaction of the director that the information submitted or portion thereof is a trade secret.

(1) In order to assert a trade secret claim regarding a submission, the claimant shall, at the time of the submission, provide the following to the director:

(a) An unredacted copy of the submission, identified as such, with each page numbered consecutively from beginning to end.

(b) A proposed public copy of the submission, identified as such, with each page numbered consecutively from beginning to end.

(c) With respect to each item of information claimed to be a trade secret, a statement that describes each item and identifies the location of each item.

(d) A sworn or affirmed statement of reasons, including the factual basis thereof, as to why each item of information redacted from the proposed public copy is a trade secret.

(2) A trade secret claim is not asserted by simply stamping, marking, or otherwise identifying information as "confidential," "trade secret," or the like.



(C) Upon a showing satisfactory to the director by any person that information maintained by the agency, or a particular part thereof, is a trade secret, the agency shall consider such information confidential. Any information determined by the director to be confidential or the subject of a pending trade secret claim may be disclosed, without the claimant's consent, as follows:

(1) To officers, employees, or authorized representatives of the state or a federal agency.

(2) In any in camera administrative proceeding or in camera judicial proceeding conducted in accordance with applicable law.

(D) If the director makes a determination denying all or any portion of a trade secret claim, the director shall not disclose the information that is the subject of the trade secret claim until the expiration of the applicable time period for appealing the determination or until all appeals have been exhausted.

(E) If a public records request encompasses records the agency possesses that are the subject of a pending claim that the records constitute a trade secret and that the release of such records is thus prohibited by law, in addition to any appropriate response otherwise required by section 149.43 of the Revised Code, within a reasonable time after receipt of the request, the requestor shall be provided with the proposed public copy of the record requested and shall be notified by the agency of the following:

(1) Certain records encompassed by the request, which are in the possession of the agency, are subject to a pending claim that such records constitute a trade secret.

(2) A determination whether such records constitute a trade secret will be made within forty-five days of the date the request to inspect public records was received by the agency.

(3) The requestor will receive written notification of such determination.

(4) Until such determination is made, the requested records are not subject to disclosure by the agency.



(5) If the director determines that any portion of the requested records constitute a trade secret, the requestor shall be provided with a public copy of the records.

(6) If the director determines that the requested records do not constitute a trade secret, the requestor shall be provided a copy of the records.