



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Guidance on Requests to Maintain Trade Secret Information Confidential

This document contains guidance for individuals or companies filing information with the Department of Environmental Protection, other than reports filed under the Toxics Use Reduction Act, that they wish to be kept confidential and exempt from public disclosure as trade secrets. Directions for TURA filings are provided in the "Questions" section of this guidance.

When does information qualify as confidential?

The Massachusetts Public Records Law¹ provides generally that all records and documents submitted to the Department are available to the public for review and copying. There are, however, recognized exemptions from this presumption including submissions containing trade secrets that were provided to the Department for use in developing policy, upon a promise of confidentiality, or where other laws specify that certain information is exempt from disclosure.

There are several statutes that the Department administers through regulations that grant authority to the Department to protect trade secrets from disclosure.² Those statutes also, however, preclude the Department from withholding from the public record air emissions and waste water effluent data.

The criteria considered by the Department in determining whether information qualifies for trade secret status are prescribed in regulations at 310 CMR 3.23. The burden to demonstrate that information claimed to be confidential satisfies those criteria lies with the submitter.

The Department will keep records confidential if the information contained in them, in whole or in part, qualifies for one of the exemptions from public disclosure as provided by the Public Records Law and the Department regulations. Confidentiality is a status that encompasses trade secrets. ***The Department will keep such information confidential from the time it receives a request from a submitter until a final determination concerning the confidential status is made.***

The following sections describe the Department's criteria and handling procedures for providing confidentiality to trade secrets.

What is a trade secret?

A trade secret means anything tangible which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production, manufacturing or management information, design, process, procedure, formula, invention, method or improvement.



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What criteria are used to determine if a submission qualifies for confidentiality as a trade secret?

The criteria listed below are considered by the Department in determining if the information qualifies as a trade secret:

- How widely the trade secret is known to people other than the filer;
- How widely the trade secret is known to the filer's employees and other people who are involved in the filer's business related to the trade secret;
- How extensive are the security measures the filer has used to protect the trade secret;
- The value of the trade secret to the filer and to the filer's competitors;
- The amount of effort it took to develop the trade secret; and
- How easy or difficult it would be for the information to be acquired or duplicated.

How should confidential portions of a document be identified?

A trade secret submission must contain two versions of the document. One version has the alleged trade secret material blacked out or otherwise concealed ("sanitized"), and the second version leaves the trade secret material exposed. The sanitized version shall be identified with the language "**Trade Secret Removed**".

The reason for requiring two separate sets of information is the Department's presumption that all records submitted to it are public, unless specifically exempted. By providing a sanitized version of the information, as well as a complete, clean version, the Department can make the non-confidential portions available for public review in accordance with the Public Records law and Department regulations.

How is trade secret claim information protected from public disclosure?

DEP will place the sanitized version of a trade secret document in the public file and keep the exposed version separate and confidential until it makes a final determination on the confidentiality request. The Department may decide that parts of a document are confidential while other parts are not. Those latter parts will be transferred to the public record. Stamping documents "Confidential" is not enough to qualify for confidentiality and exempt them from public disclosure. A written request including sufficient supporting information satisfying the regulations criteria must be submitted to the Department. If the supporting information is insufficient, the Department will not grant confidentiality protection.

What information must be submitted to substantiate a trade secret confidentiality request?

A request for confidentiality as a trade secret must include the following information:

- A description or list and estimated numbers of the persons, other than employees; for example, contractors, consultants, agents, customers, visitors, or others; who knew or had access to the



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information claimed to be a trade secret. No names or similar identifying information is required.

- A description or list and estimated numbers of the filer's employees and business associates who either know about or had access to the alleged trade secret. The listing should include, for example, proprietors, partners, officers, directors, managers, and any employees (full or part-time).
- A listing of the government agencies (federal, state or local) to which the alleged trade secret information has been submitted, with a brief explanation about why the information was submitted. If no confidentiality request was made, please explain why.
- A description of all the measures taken by the filer to guard the secrecy of the trade secret from unauthorized disclosure. The description should include, for example,
 - Warnings (written or verbal) to employees, business associates or contractors that the information is a trade secret and that sanctions would be imposed for unauthorized disclosure of the information. If no warnings have been given and/ or sanctions discussed, or both, the filer should specifically state that in the submission.
 - Confidentiality provisions in contracts or other agreements the filer has entered into with, for example, employees, agents, contractors, consultants, customers, visitors or others.
- A statement of how the filer would be harmed if the alleged trade secret was made available to the public and why such harm should be considered substantial. The statement should include an estimate of the value of alleged trade secret to the filer and/or the filer's competitors; or the reasons why it is not reasonably possible to estimate the value to the filer or the filer's competitors.
- A statement of the level of effort the filer invested to develop the alleged trade secret including, for example, the number of person-hours and dollars expended to develop the trade secret.
- A statement of the ease or difficulty of acquiring or duplicating, other than through Department disclosure, the alleged trade secret. If the trade secret is a formula or manufacturing method, the statement should include a representation that the product cannot be appropriately acquired or the formula cannot be revealed by an analysis of the product. If the alleged trade secret is a customer list, the statement should include a representation that the list has never been given or sold to any person or company for any purpose other than conducting the filer's business, and that the list cannot be reproduced in a practical way by examining public records on file with the Department or with other government agencies;
- If the filer voluntarily submitted the information to the Department, why Department disclosure would discourage similar submissions of information to the Department in the future.



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- A statement of the time period the filer wants to keep the information confidential: and
- The reasons for submitting the information to the Department.

Questions and how to get further information?

Please contact the DEP's [Regional Offices](#) if you have any questions or to obtain additional assistance.

For trade secret filings under the Toxics Use Reduction Act (TURA)

If you have any questions regarding trade secret filings under the Toxics Use Reduction Act (TURA), please contact:

Walter Hope at 617-292-5982

Email: Walter.Hope@state.ma.us.

[Request to Maintain Information Confidential Form](#)

Massachusetts Public Records Law, G.L. c. 66 ss 10, as well as the regulations promulgated by the Department of Environmental Protection ("the Department") at 310 CMR 3.00, Access to and Confidentiality of Department Records and Files.

M.G.L. c. 21, s. 27(12); M.G.L. c. 21C, s. 4; M.G.L., c. 21E, s. 3(c); M.G.L. c. 21I, ss. 3 and 20; and M.G.L. c. 111, ss. 142B and 142D.