

Oregon Sunshine Committee

Primer on “Trade Secrets” and Oregon’s Public Records Law

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Common Issues & Questions Relating to Trade Secrets Under Oregon's Public Records Law

-Should there be a separate appeal process for public records disputes involving trade secrets?

-How can third parties be dissuaded from over-classification/over-generalization when claiming trade secrets? It makes it nearly impossible for agencies to identify and segregate nonexempt material when it is clear the third party has over-classified information as a trade secret.

-Should there be some sort of standardized form that third parties should complete when asserting trade secret in the context of a public records request? Or should the public contracting code provisions requiring identification of company trade secrets be enhanced?

-Agencies are challenged in meeting their burden under the public records law because they lack the internal corporate knowledge, and often the industry experience, to evaluate claims of trade secrets.

-Judicial decisions whether UTSA is, in fact, a separate and unconditional exemption from disclosure under the PRL are inconclusive.

-A "trade secret" is not synonymous with "confidential business information" under Oregon law, but many jurisdictions treat them the same for purposes of public records inspection.

-Should the definition of a trade secret in 192.345(2) be harmonized with the Oregon and federal UTSA; i.e., "reasonable measures to ensure the secrecy of the information" instead of "known only to certain individuals in the organization"?

Trade Secrets Excerpt from the *Attorney General's Public Records and Meetings Manual (2019)*

ORS 192.345(2) conditionally exempts:

Trade secrets. “Trade secrets,” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Records withheld from disclosure under this provision must meet all four of the following criteria:

- o the information must not be patented;
- o it must be known only to certain individuals within an organization and used in a business the organization conducts;
- o it must be information that has actual or potential commercial value; and,
- o it must give its users an opportunity to obtain a business advantage over competitors who do not know or use it.

This definition is not exclusive, and thus “trade secret” may also include information described in the Uniform Trade Secrets Act (UTSA).¹ Judicial opinions construing the UTSA can therefore be useful in interpreting the scope of a “trade secret” under Public Records Law.

The trade secret exemption is most frequently relevant to information a public body has obtained from third parties, such as contractors or regulated entities. Determining whether information from a particular entity qualifies as a trade secret is fact specific.² And a public body cannot rely merely on the entity’s assurance that the information is a trade secret.³ This often places a public body in the difficult position of carrying the burden to prove that

¹ The UTSA allows injunctive relief and damages for the misappropriation of a trade secret. [ORS 646.463, 646.465](#). “Trade secret” is defined as “information * * * that * * * [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” [ORS 646.461\(4\)](#).

² E.g., [Kaib’s Roving R.P.H. Agency, Inc. v. Smith](#), 237 Or App 96, 103 (2010) (“[T]he question of whether certain information constitutes a trade secret ordinarily is best resolved by a fact finder after full presentation of evidence from each side.” (Internal quotation marks omitted.)).

³ See [Brown v. Guard Publ’g Co.](#), 267 Or App 552, 570 (2014) (“‘Trust us, it’s exempt’ * * * is not how Oregon’s public records law * * * is intended to operate.”).

information is exempt as a trade secret, without possessing the facts necessary to meet this burden.

We therefore recommend that public bodies require any entities submitting sensitive business information to clearly label any asserted trade secrets.⁴ Submitting entities should be told that this information will be disclosed if it does not qualify as a trade secret or if the public interest requires disclosure.

Once a records request is received for any information that has been labeled as trade secret, the public body should notify the entity and request factual information, and legal argument where appropriate, that supports the assertion of the trade secret exemption. Once the necessary information is obtained, the public body will then be in a position to properly determine whether to assert the exemption.

Relevant facts to obtain from the entity asserting a trade secret often include internal steps the entity takes to keep the information secret; to the extent the information is by necessity shared with or known by outside parties, the steps taken to ensure that these parties keep the information secret; how the information would be economically valuable to a competitor or could be used to economically harm the entity; and the time, effort, and expense needed to compile the information.⁵

We have concluded that fee schedules and price lists provided in response to a request for proposal can meet the criteria for exemption as trade secrets.⁶ We have also concluded that lightning strike data made available to the Oregon Department of Forestry under a license with a private corporation met the criteria.⁷ More recently, we have concluded that an insurer's projections of trend, target loss ratios, and accidental death rates, submitted to the Insurance Division as part of the insurer's rate filing, were exempt as trade secrets.⁸

Determining whether information is exempt as a trade secret depends on the public interest in disclosure.⁹ In adopting the UTSA, the Oregon legislature included a provision immunizing public bodies from misappropriation claims.¹⁰ To qualify for this immunity, the disclosure must be made pursuant to an order issued under the Public Records Law or on the advice of an attorney authorized to advise the public body.¹¹ This provision indicates that the legislature expected that disclosures under the Public Records Law might include information

⁴ Cf. Public Records Order, Mar 11, 2013, [Meiffren](#), at 5 (information did not qualify as trade secret where submitters did not "take the simple step" of checking a box requesting confidentiality).

⁵ See [Kaib's Rovig](#), 237 Or App at 102–03 (analyzing claim under the UTSA). An entity seeking to a void disclosure under the UTSA must "demonstrate[e] that disclosure will work a clearly defined and serious injury[, as opposed to making b]road allegations of harm unsubstantiated by specific examples or articulated reasoning." [Pfizer Inc. v. Or. Dep't of Justice](#), 254 Or App 144, 162 (2012) (internal quotation marks omitted).

⁶ Public Records Order, Dec 7, 1989, [Baldwin](#); see also Public Records Order, Mar 4, 2004, [Zaitz](#), at 6–7 (pro forma as related to sale of surplus state property).

⁷ Public Records Order, Sept 4, 1998, [Spatz](#), at 6–7.

⁸ Public Records Order, Aug 8, 2007, [Kirsch](#).

⁹ Public Records Order, Apr 26, 2010, [Bachman](#), at 2. Prior to this order, we had suggested that the UTSA was an unconditional exemption; we no longer believe that prior analysis is correct.

¹⁰ [ORS 646.473\(3\)](#).

¹¹ *Id.*

otherwise protected as a trade secret. The legislature chose to address that possibility by giving public bodies immunity against any resulting misappropriation claims. In addition, in adopting the UTSA, the legislature did not amend the existing conditional exemption for trade secrets, despite clearly being aware of the UTSA's interplay with Public Records Law. And finally, at the time the UTSA was adopted, the Public Records Law did not contain the "catchall" exemption contained in ORS 192.355(9). Instead, the Public Records Law included an enumerated list of specific statutes providing for some type of confidentiality. The legislature did not add any of the newly passed UTSA to that list.¹²

However, because the UTSA evinces a legislative policy in favor of protecting legitimate trade secrets, it is appropriate to give heightened scrutiny to contentions that the public interest requires the disclosure of a trade secret. That is, the balancing test will be less likely to favor disclosure.

In assessing whether the public interest requires the disclosure of trade secrets, we typically look to how much harm the entity asserting a trade secret would suffer by disclosure; the benefits enjoyed by that entity in connection with submitting the information at issue; and the nature of the governmental activity connected to the information. For example, we concluded that the public interest required disclosure of salary information of private companies that had received sizable property tax abatements: even assuming the information qualified as trade secret, we found that disclosure would help the public monitor the effectiveness of this investment of public funds tied to job creation.¹³ We also noted that the information was not specific enough to identify wages paid to each individual or occupational class; that is, there was "only an attenuated possibility that disclosure could actually harm the [relevant] commercial interests."¹⁴

Absent an order compelling disclosure under the Public Records Law, a public body should not release any trade secret information without determining that the public interest requires disclosure and consulting with an attorney authorized to give it legal advice.¹⁵

¹² Or Laws 1987, ch 537 (enacting the UTSA).

¹³ Public Records Order, Mar 11, 2013, [Meiffren](#), at 5–6.

¹⁴ *Id.* at 6.

¹⁵ A public body is immunized from any claim or action for misappropriation of a trade secret where the public body in good faith relied on an order of disclosure from the Attorney General or appropriate district attorney, or on its attorney's advice. [ORS 646.473\(3\)](#).

Oregon Statutes Restricting the Disclosure of Trade Secrets

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
65.805(2)(a)	Trade secrets submitted to the Attorney General in the required notice of a nonprofit's transfer of hospital assets	DOJ	No. Provides that trade secrets as defined in ORS 192.345(2) "shall not be disclosed" except as provided in ORS 65.805(2)(b).	None.	None.
94.974(2)	A list identifying campground members received from a membership camping operator.	Real Estate Agency	Unclear. List "shall be exempt from disclosure, as trade secrets ... under ORS 192.345."	None.	None.
192.345(2)	Trade secrets conditionally exempt under the Public Records Law	All	Not exempt if the public interest requires disclosure in the particular instance.	<p>Pfizer Inc. v. Or. Dep't of Justice, 254 Or App 144, 162 (2012);</p> <p>Kaib's Roving R.PH. Agency, Inc. v. Smith, 237 Or App 96, 103 (2010)</p> <p>SBTech Malta Ltd v. DOJ & Oregon Lottery (2020) (unreported trial court judgment)</p> <p>Chevron v. DEQ (2019) (unreported trial court judgment)</p>	<p>Crampton (2/24/21);</p> <p>Ramsey (1/3/20);</p> <p>Lukens (11/6/18);</p> <p>Mieffren (4/12/2013);</p> <p>Mieffren (3/11/2013);</p> <p>Knivila (7/3/2012);</p> <p>Walth (11/8/2010);</p> <p>Bachman (4/26/2010);</p> <p>Hunsberger (2/25/2008);</p> <p>Kirsch (8/8/07);</p> <p>Stephenson (11/15/2006);</p> <p>Iboshi (10/24/2005);</p> <p>Zaitz (3/4/04);</p> <p>Suo (3/10/2000);</p> <p>Spatz (9/4/98);</p> <p>Riley (8/8/1997);</p> <p>Baldwin (12/7/89)</p>

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
279B.055(5)(c)	Trade secrets and other confidential information submitted in a contract bid	DAS; Contracting Agency	Unclear. Contracting agency “may withhold from disclosure to the public trade secrets, as defined in ORS 192.345 ... that are contained in a bid.”	None.	None.
279B.115(3)	Trade secrets and test data provided by a potential contractor, seller, or supplier for use in developing a qualified products list, if confidentiality is requested	DAS; Contracting Agency	Unclear. Contracting agency “may” keep confidential trade secrets provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.	None.	None.
279C.107(2)	Trade secrets or confidential information contained in proposals submitted by a bidder providing architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services	DAS; Contracting Agency	No. Provides that trade secrets as defined in ORS 192.345(2) “shall” be withheld.	None.	None.
279C.410(3)	Trade secrets or confidential information contained in proposals submitted by bidders for a public improvement contract	DAS; Contracting Agency	Unclear. Contracting agency “may withhold from disclosure to the public trade secrets, as defined in ORS 192.345 ... that are contained in a proposal.”	None.	None.

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
305.430(3)	Confidential business records, tax returns, or trade secrets, used in tax court proceedings, if confidentiality is ordered by the court	OJD	In determining whether a protective order should be issued, the court shall weigh the harm suffered by the disclosing party against any benefit received by the public from disclosure.	None.	None.
453.332	Site specific information regarding the exact amount and location of a hazardous substance	State Fire Marshall	Unclear. Employer may withhold hazardous substance identity if entitled to protection as a trade secret under the PRL.	None.	None.
465.250(5)	Information submitted in the course of investigating a possible release of hazardous waste determined to be a confidential trade secret under ORS 466.090.	DEQ	Probably not (<i>see</i> ORS 466.090).	None.	None.
466.090(2)	Makes confidential trade secrets submitted in the course of regulating hazardous waste transportation, treatment, and disposal	DEQ	No.	None.	None.
466.800(2)	Trade secrets obtained in the course of regulating oil storage tanks	DEQ	No.	None.	None.
468.095(2)	Trade secrets obtained in the course of regulating air and water quality, except for emission data	DEQ	No. Confidential information “shall not be made a part of any public record”	None.	None.

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
517.705(2)	Production records, mineral assessments, or trade secrets submitted with an application for an exploration permit	Dep't of Geology and Mineral Industries	Unclear. Trade secrets submitted under this provision "shall be confidential."	None.	None.
517.901	Production records, mineral assessments, or trade secrets submitted by a mine operator or landowner	Dep't of Geology & Mineral Industries	Unclear. Trade secrets submitted under this provision "shall be confidential."	None.	None.
520.027	Information about holes drilled as part of a seismic program.	Dep't of Geology & Mineral Industries	No. Information submitted "is a trade secret under ORS 192.345 and is not subject to public disclosure under the PRL."	None.	None.
520.097(1)	Gas and oil well logs, records, and reports, until two years after the abandonment or completion of a well	Dep't of Geology & Mineral Industries	Unclear. Records, "are trade secrets under" the PRL and are not subject to public disclosure under the PRL.	None.	None.
522.365	Geothermal well logs and records, for a period of four years after receipt	Dep't of Geology & Mineral Industries	Unclear. Records "shall be exempt from disclosure as a trade secret pursuant to ORS 192.345" unless the operator gives approval.	None.	None.
616.215(11)	Trade secrets obtained in food misbranding/adulteration investigations	Dep't of Agriculture	No. Affirmatively prohibits most disclosures of trade secrets acquired by Dep't of Agriculture	None.	None.

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
646.957(1)	Confidential business information and trade secrets obtained in the course of regulating fuel, if confidentiality is found in rule	Dep't of Agriculture	Unclear. Implementing rule states only that the disclosure of trade secrets will be governed by the PRL. OAR 603-027-0450.	None.	None.
646A.689	DCBS may not post to its website information submitted by drug manufacturers determined to be a trade secret under ORS 192.345(2).	DCBS	DCBS may post such information if the public interest requires disclosure.	None.	None.
654.120(3)	Trade secrets obtained in investigating workplace safety matters	DCBSOSHA	Unclear. Makes trade secrets under the federal definition in section 1905, Title 18 and section 1839, Title 18 , confidential. Those provisions generally criminalize the disclosure of trade secrets by federal employees.	None.	None.
732.686(1)(a)	Corporate governance annual disclosures by insurers	DCBS	No. Makes trade secrets confidential and privileged and not subject to disclosure under the PRL.	None.	None.
743.018(3)(b)	Trade secrets in life and health insurance rate filings, if confidentiality is found in rule	DCBS	Unclear. Could not find implementing rule.	None.	None.

Statute Number	Statute Description	Agencies Affected	Balancing Test or Caveats	Court Cases	Public Records Orders
743B.013	A small employer health benefit plan's rating practices and renewal underwriting practices	DCBS	No. Information is proprietary and trade secret and is not subject to disclosure to persons outside the department.	None.	None.
777.795(2)	Trade secrets and sensitive business information of a private concern	Port export trading corporation	Unclear. Makes exempt from disclosure "trade secrets, as defined in ORS 192.345(2).	None.	None.

Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475)

646.461 Definitions for ORS 646.461 to 646.475. As used in ORS 646.461 to 646.475, unless the context otherwise requires:

(1) “Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means. Reverse engineering and independent development alone shall not be considered improper means.

(2) “Misappropriation” means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means;

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret;

(c) Disclosure or use of a trade secret of another without express or implied consent by a person who, before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or

(d) Disclosure or use of a trade secret of another without express or implied consent by a person, who at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:

(A) Derived from or through a person who had utilized improper means to acquire it;

(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

(3) “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

(4) “Trade secret” means information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1987 c.537 §2]

646.463 Enjoining misappropriation; payment of royalties; affirmative acts.

(1) Actual or threatened misappropriation may be temporarily, preliminarily or permanently enjoined. Upon application to the court, an injunction shall be vacated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, the court may order affirmative acts to protect a trade secret. [1987 c.537 §3]

646.465 Damages for misappropriation.

(1) A complainant is entitled to recover damages adequate to compensate for misappropriation, unless a material and prejudicial change of position by a defendant prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable.

(2) Damages may include both the actual loss caused by misappropriation, and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss, but shall not be less than a reasonable royalty for the unauthorized disclosure or use of a trade secret.

(3) Upon a finding of willful or malicious misappropriation, punitive damages may be awarded in an amount not exceeding twice any award made under subsections (1) and (2) of this section. [1987 c.537 §4]

646.467 Attorney fees. The court may award reasonable attorney fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful or malicious misappropriation is found by the court or jury. [1987 c.537 §5]

646.469 Preservation of trade secret by court; methods. In any action brought under ORS 646.461 to 646.475, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [1987 c.537 §6]

646.471 Limitation on commencement of action. An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [1987 c.537 §7]

646.473 Conflicting tort, restitution or other law providing civil remedies; exclusions for certain other remedies; limited immunity for public bodies and officers, employees and agents.

(1) Except as provided in subsection (2) of this section, ORS 646.461 to 646.475 supersede conflicting tort, restitution or other law of Oregon providing civil remedies for misappropriation of a trade secret.

(2) ORS 646.461 to 646.475 shall not affect:

- (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (b) Other civil remedies that are not based upon misappropriation of a trade secret;
- (c) Criminal remedies, whether or not based upon misappropriation of a trade secret; or
- (d) Any defense, immunity or limitation of liability afforded public bodies, their officers, employees or agents under ORS 30.260 to 30.300.

(3) Notwithstanding any other provision in ORS 646.461 to 646.475, public bodies and their officers, employees and agents are immune from any claim or action for misappropriation of a trade secret that is based on the disclosure or release of information in obedience to or in good faith reliance on any order of disclosure issued pursuant to ORS 192.311 to 192.431 or on the advice of an attorney authorized to advise the public body, its officers, employees or agents. [1987 c.537 §8]

646.475 Application and construction of ORS 646.461 to 646.475; short title; effect of invalidity. (1) ORS 646.461 to 646.475 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ORS 646.461 to 646.475 among states enacting them.

(2) ORS 646.461 to 646.475 may be cited as the Uniform Trade Secrets Act.

(3) If any provision of ORS 646.461 to 646.475 or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of ORS 646.461 to 646.475 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 646.461 to 646.475 are severable. [1987 c.537 §§9,10,11]

Excerpts From the Federal “Protection of Trade Secrets Act” ([18 USC Chapter 90, sections 1831-1839](#))

Note: This Act generally criminalizes the theft of trade secrets and provides civil cause of action for the misappropriation of trade secrets, as those terms are defined under federal law, where the trade secrets relate to a product or service used in, or intended for use in, interstate or foreign commerce.

Definition of Trade Secret ([18 USC 1839\(3\)](#)): the term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if— (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;

Exceptions to Prohibitions Under the Act ([18 USC 1833\(a\)\(1\)](#)): This chapter does not prohibit or create a private right of action for: (1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State;

Comparison of Oregon’s Trade Secrets PRL Exemption to Oregon & Federal Trade Secrets Acts

Oregon Public Records Law (ORS 192.345(2))	Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475)	Federal Protection of Trade Secrets Act (19 USC Chapter 90)	Notes
“Trade secrets,” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information	“Trade secret” means information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:	“Trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—	Each description is representative and not exclusive to the types of information that may qualify as a trade secret.
which is not patented			Unique to Oregon PRL.
which is used in a business it conducts, having actual or potential commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it	(a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and	(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;	Substantially similar.
which is known only to certain individuals within an organization	(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	(A) the owner thereof has taken reasonable measures to keep such information secret;	This is one area where the PRL definition does not closely align with the others. However, when evaluating this factor, the <i>AG’s Public Records and Meetings Manual</i> (2019) concludes that agencies should, to the extent the information is by necessity shared with or known by outside parties, inquire about the steps taken to ensure that these parties keep the information secret.

Summaries of Select Oregon Trade Secret Cases

SBTech Malta Ltd v. DOJ & Oregon Lottery (2020) (unreported trial court judgment). Denying plaintiff's request for a preliminary injunction to prevent the disclosure of portions of plaintiff's contract with the Oregon Lottery. The trial judge ruled, consistent with the Attorney General's conclusion in the underlying public records order, that plaintiff failed to establish that terms of a public contract, negotiated at arms' length, constituted a trade secret. Where the record reflected that the terms were intensively negotiated, they are not the trade secret of either party.

Chevron v. DEQ (2019) (unreported trial court judgment). Granting plaintiff's request to enjoin DEQ from disclosing individually-identifiable information regarding participants in Oregon's Clean Fuels Program. The trial judge concluded that DEQ, in its Clean Fuels Program Reporting Tool User Guide, obligated itself to withhold such information to the extent such information is exempt from disclosure under the public records law. The trial judge concluded that such information meets the UTSA definition of a "trade secret," that its disclosure would constitute a prohibited misappropriation, and that the information is therefore unconditionally exempt from disclosure under ORS 192.355(9)(a) (state law catchall). Underlying Attorney General's public records order concluded that regardless whether the information constituted a trade secret, the public interest required disclosure in that instance.

Pelican Bay Forest Products, Inc. v. Western Timber Products, Inc., 297 Or App 417 (2019). Company's customer list qualified as a trade secret in the context of a claim of misappropriation under Oregon's UTSA.

Kaib's Roving R.P.H. Agency, Inc. v. Smith, 237 Or App 96 (2010). When someone expends considerable time, effort, and expense to compile information that might otherwise be available in the public domain, "that information in its compiled form can meet the statutory definition of a trade secret under Oregon's Uniform Trade Secrets Act. The question of whether certain information constitutes a trade secret ordinarily is best resolved by a fact finder after full presentation of evidence from each side." A trade secret determination "is made, not by reference to legal principles, but on the basis of the historical facts and circumstances presented: Is the information at issue generally known within the relevant community? Is it more valuable by virtue of not being generally known? What efforts were made to keep it secret? Were those efforts reasonable? *Et cetera.*"

Pfizer Inc. v. Or. Dep't of Justice, 254 Or App 144 (2012). Pfizer entitled to summary judgment enjoining the disclosure of certain records provided by Pfizer to DOJ pursuant to a confidentiality agreement, where a declaration from Pfizer's director established that the records were exempt as trade secrets under Oregon's UTSA, and where DOJ offered no evidence at trial controverting the director's declaration. The court concluded "the confidentiality agreements obligate[d] DOJ to withhold the Pfizer-produced exhibits to the extent that they are exempt from disclosure under the OPRL.

Citizens' Utility Board v. Public Utility Commission, 128 Or. App. 650 (1994). Courts traditionally examine six factors in determining whether information constitutes a trade secret: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to safeguard the secrecy of the information; (4) the value of the information to the business or its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. In contexts in which a party seeks to prohibit disclosure of information as a trade secret, the party must also establish good cause for the protective order by demonstrating that disclosure will work a clearly defined and serious injury. Broad allegations of harm unsubstantiated by specific examples or articulated reasoning do not satisfy the good cause requirement. The harm must be significant, not a mere trifle.