

LEGALLY SPEAKING

By Bob Dunlevey

PROTECT YOUR CONFIDENTIAL INFORMATION

How effectively do you protect your company's confidential information? Even though most companies wish to guard such, they do not take the time and effort to ensure against the improper use or disclosure. They have no overall program to protect that information. A company must not only protect its own information, but also the information of its customers. Customers expect no less. Unfortunately, there appears to be an alarming trend where employees disregard their obligations to protect this information. Moreover, this information has become far more transportable in this computer age and with the advent of offsite employment, control becomes an issue.

Remember, you cannot enforce a covenant not to compete or a confidentiality provision unless your company has taken reasonable efforts to maintain that confidentiality. These efforts include such things as an overall written confidentiality program, security systems, restricted access to only those who need to know, confidentiality agreements for all employees, covenants not to compete for sensitive positions, ongoing monitoring of the written program, training of employees, enforcement through monitoring of possible improper use and legal actions to stop violations.

Here are a few additional tips:

- Appoint a **compliance officer** to head up the program. This employee should assess what confidential information you have, establish the program, enforce its provisions and answer questions of your employees.
- A **written policy** should be published, at least, in your employee handbook.

- **Security system** – mark it confidential, lock it up when not in use, restrict access and shred the information when it is no longer needed.
- **Notice** – publicize your program and the need for confidentiality in handbooks, newsletters, and applications.
- **Training** – have group meetings at least annually to train and retrain employees and have sign-in sheets to confirm attendance.
- **Reporting** – encourage employees to report the misuse of confidential information such as espionage.
- **Monitoring** – your compliance officer should monitor the overall program as part of his or her daily responsibilities.
- **Employment applications** – set the stage for protection by referencing your confidential information in your application.
- **Employment agreements** – utilize simple non-disclosure agreements in order to give you a contractual basis for stopping improper disclosure.
- **Separation reminder letters** – when an employee departs, send a letter reminding him or her of their obligations to maintain confidentiality.
- **Enforcement** – discipline employees for breach of the policy and act promptly through litigation if your confidential information is misappropriated. Your failure to take reasonable actions for enforcement will foreclose you from seeking relief from others thereafter.
- **Visitor Agreements** – have visitors sign agreements to maintain confidentiality as to what they see; make them wear badges and protect sensitive information by enclosures. Don't permit visitors to wander your facility.
- **Passwords** – different levels of password protection should be accorded to different levels of computerized confidential information.
- **Monitoring computer software** – utilize software which tracks access to your databases so you know who has been looking at your information and when.
- **Job descriptions** – prepare job descriptions for employees which make, as part of their essential functions, the “maintaining of confidentiality.”
- **Online information** – identify online information, where necessary, as protected information and have the appropriate statement affixed to the information visible to the reader.

Remember that Ohio is one of several states adopting the Uniform Trade Secrets Act. It protects confidential, proprietary trade secret information, such as scientific or technical information, as well as business and financial information. Customer lists are also protected. This law permits a company to seek injunctive relief, damages and attorneys' fees in the event there is an improper use or disclosure of the information. But, don't rely just on this law. Create your program today with the help of this checklist. For a confidentiality or visitor's agreement, or PowerPoint presentation on confidentiality programs (at no expense to you), contact Bob Dunlevey at (937) 223-6003.