

WAC 468-600-605 Designation of sensitive business, commercial or financial information and trade secrets. (1) The following procedure shall be followed by proposers to designate information as "sensitive business, commercial or financial information" under RCW 47.29.190: Each individual page of a proposal that contains sensitive business, commercial or financial information must be clearly marked "sensitive business, commercial or financial information."

(2) A proposer may desire that certain information be considered "trade secret" information for purposes of applying the public records exemption set out in state law. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. To qualify for that exemption, trade secret information must meet the following criteria:

- (a) Not be the subject of a patent;
- (b) Be known only to a limited number of individuals within an organization;
- (c) Be used in a business that the organization conducts;
- (d) Be of potential or actual commercial value; and
- (e) Be capable of providing the user with a business advantage over competitors not having the information.

(3) The following procedures shall be followed by the proposer to designate information as trade secret:

(a) Each individual page of a proposal, plan or progress report that contains trade secret information must be clearly marked trade secret;

(b) Written substantiation describing what information is considered trade secret and why, must accompany the document. The written substantiation shall address the following:

(i) Identify which portions of information are claimed trade secret;

(ii) Identify how long confidential treatment is desired for this information;

(iii) Identify any pertinent patent information;

(iv) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others;

(v) Describe the nature of the use of the information in business;

(vi) Describe why the information is considered to be commercially valuable;

(vii) Describe how the information provides a business advantage over competitors;

(viii) If any of the information has been provided to other government agencies, identify which one(s); and

(ix) Include any other information that supports a claim of trade secret.

(4) Notwithstanding a proposer's designation of information as constituting "trade secret," and subject to a proposer's opportunity to object to disclosure under WAC 468-600-605, the department may independently assess whether the trade secret exemption applies when responding to a public records request.

[Statutory Authority: RCW 47.29.030. WSR 07-04-095, § 468-600-605,
filed 2/6/07, effective 3/9/07.]