

Exempt Records and Trade Secrets

Records that are exempt from the Public Records Act will normally not be released. Only information claimed to be a trade secret at the time of submittal to the District may be treated as a trade secret. [Masonite Corp. v. County of Mendocino A.Q.M.D., 49 Cal.Rptr.2d 639 (1996)]. The procedures set forth below will be used when responding to a Public Records Act request that concerns records claimed as exempt or trade secret, and will also be used for any District-initiated review of records claimed as exempt or trade secret.

The District will provide notice, by mail and email, to the facility or entity claiming exempt or trade secret status. The facility or entity is responsible for providing the District with its current mailing address and the appropriate email address for purposes of receiving notice under this procedure, including any changes thereto. The notice from the District shall include a copy of the public records request and a request for a detailed and complete justification of the bases for exempt or trade secret status. Within 15 calendar days of the date of the notice, the facility or entity must submit a declaration setting forth its justification as to why the record, or portions thereof, should be withheld from disclosure. The District's Staff will be available to assist the facility or entity with any questions regarding this process. If no justification is timely received, the subject records shall be released as specified herein.

Any justification claiming trade secret status must include a sworn declaration that should address the following six factors (Restatement of Torts Sec. 757.):

1. the extent to which the information is known outside of the person's business;
2. the extent to which it is known by employees and others involved in the person's business;
3. the extent of measures taken by the person to guard the secrecy of the information;
4. the value of the information to the person's business and to the person's competitors;
5. the amount of effort or money expended by the person in developing the information;
and
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

In addition, any justification must be specific enough so as to identify exactly which information in a document constitutes a trade secret or is exempt, so that it may be redacted from the document, with the remaining information to be released. Accordingly, all documents subject to the request should be reviewed by the facility or entity claiming exempt or trade secret status before submitting its justification to enable it to specifically segregate information contained in those documents that may or may not be released. Failure to so segregate may result in the release of all information.

The District shall evaluate the justification, and any other information at its disposal and shall determine if the justification supports the claim that the material is in fact exempt or is a trade secret under Gov. Code Sec. 6254 and Sec. 6254.7, or otherwise privileged. If the District determines that the claim is supported by the justification and that the

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material is exempt or a trade secret, the Public Records Coordinator shall notify the requestor that the data sought is exempt or a trade secret and therefore cannot be released. The requestor shall be advised of the requestor's right to bring appropriate legal action to compel disclosure. Any such action should name the facility or entity claiming an exemption from disclosure as a real party in interest.

If the District determines that the claim of exemption or trade secret is not meritorious or is inadequately supported by the evidence, the District shall promptly notify, by certified mail and email, the facility or entity who claimed exempt or trade secret status that the justification is inadequate, and that the facility or entity has a right to bring appropriate legal action to prevent disclosure. The notification shall also inform the facility or entity who claims exempt or trade secret status that the information will be released if: (1) within 21 calendar days from the date of the notification, the facility or entity fails to file court pleadings to initiate judicial review of its trade secret claim, and fails to notify the District of such filing; or (2) once legal proceedings are initiated, a trial court determines that the trade secret exemption does not apply and further determines that the information may be released. If a facility has filed court pleadings to initiate judicial review within the 21-day period but the trial court has not made a determination on the trade secret status of the information within 120 days from the day judicial review is initiated, the District retains the discretion to release the information unless there is a court order prohibiting such release. In the event the facility or entity cannot be reached at its last listed mailing or email address with the District, the information shall be released after 21 calendar days from the date of such notice. Any legal action brought by the facility or entity should name the requestor as a real party in interest.

The above procedures regarding exempt records and trade secrets may not apply to requests made by other governmental agencies for purposes of carrying out their official responsibilities, if such agencies agree to treat the disclosed material as confidential pursuant to a written confidentiality agreement with the District. The confidentiality agreement shall designate those persons authorized by the requesting governmental agency to obtain the information. [Gov. Code Sec. 6254.5].

The above procedures are also inapplicable if the requestor and the facility or entity enters into an agreement waiving any objections to the District's release of the requested information. A signed copy of the agreement must be provided to the District.

March 6, 2017