

Pursuant to section 149.43 of the Ohio Revised Code, records maintained by public offices, such as Ohio EPA, generally are public records, unless they are specifically exempted from public disclosure by this statute. One of the exemptions in section 149.43 applies to records whose release is prohibited by state or federal law. "Trade secrets" have been held to be one such category. Similarly, section 6111.05 of the Ohio Revised Code provides that records, reports or other information, except data concerning discharges or the quality of receiving waters, that would divulge trade secrets, to which the Director of Environmental Protection has access under Chapter 6111., are to be treated as confidential.

The applicable definition of "trade secret" is set out in section 1333.61 (D) of the Ohio Revised Code:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It 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.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

If an person submits material to Ohio EPA, upon which they wish protection as a trade secret, they must request trade secret status for the document from the Director. The request must demonstrate, in specific, the precise manner in which the information meets the criteria of section 1333.61(D). For example:

- How the asserted trade secret information derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable through proper means by, other persons.
- The persons or categories of persons other than the requestor, who may obtain economic value from disclosure of the asserted trade secret information, and the nature of such economic value.
- The extent to which the value to the requestor of the asserted trade secret

information would be diminished by disclosure to other persons.

- The basis for the assertion that the information in question is not generally known to, or ascertainable through proper means by, other persons.
- The measures taken by the requestor to maintain the secrecy of the information in question.

Second, the requestor must with specificity, the material to which the request attaches. For example, is the request for trade secret protection attached to the entire document, or just portions thereof. If portions, then a public (redacted) version of the documents from which the asserted trade secret information, and only the asserted trade secret information, has been redacted, must be submitted.

The request for trade secret protection is then submitted to the legal for a determination. Until a determination is made, the material is treated as a trade secret

I hope the foregoing adequately addresses your inquiry. If you have any questions or wish to discuss this matter in greater detail, please contact me at 644-2747.

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