



Local and Commonwealth Agencies and third-parties should be aware of their obligations and rights under section 707 of the law when a Right-to-Know request seeks records involving trade secrets and confidential proprietary information that have been provided to the Agency by a third-party.

The law requires an Agency to notify a third-party when the Agency receives a request for records, if both conditions are met:

- 1) The third-party provided the record to the Agency and;
- 2) The third-party included a written statement signed by a representative of the third-party stating that the record contains a trade secret or confidential proprietary information.

HOW AN AGENCY SHOULD PROVIDE NOTICE

- 1) Agency should first invoke a 30-calendar extension and notify the requester of the extension in accordance with the procedure for invoking an extension under this Act.
- 2) The Agency shall provide notice to the third-party within five business days from the receipt of the RTK request. (While this section of the law does not state that the notice should be in writing, the Office of Open Records recommends that the notice should be in writing for record-keeping purposes and for establishing a record for appeal.)
- 3) The third-party shall have five-business days from the date it receives notification from the Agency to provide input on the release of the record.
- 4) Within 10 business days from the date the Agency provided notice to the third-party, the Agency shall either release the record or deny release of the record in accordance with the procedures provided in this Act for issuing a denial.

All parties should be advised that merely because a third-party has stamped a record or submitted a written statement indicating that a record is a trade secret or a record of confidential proprietary information does not mean that the record is a trade secret or that it contains confidential proprietary information.

Please be advised that the section 102 defines trade secret and confidential proprietary information as follows:

Trade secret: Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

1) 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

2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term trade secret includes data processing software obtained by an Agency under a licensing agreement prohibiting disclosure.

Confidential proprietary information: Commercial or financial information received by an Agency:

1) Which is privileged or confidential; and

2) Disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

Additionally, please be advised that an Agency is not barred from releasing a document solely because a third-party has provided input to the Agency recommending the denial of a record. The Office of Open Records strongly advises each Agency to work very closely with its general counsel or solicitor before denying or releasing a record under this provision.