

EASY GUIDE TO PROTECTING CONFIDENTIAL INFORMATION

Why do I need to know this?

Your business may suffer serious damage or loss if your confidential information is misused by other people. If you know about the rights you have in confidential information, you will be able to control it, and stop valuable business information from being seen or used in a way that may damage your business.

So, what do I need to know?

Confidential information is a valuable type of intellectual property right. The rights will only exist for as long as the confidential information remains secret. This is why you need to be really careful about where it is kept, who sees it, and who is allowed to use it. Physical security is just as important as legal protection. If confidential information is misused, you can take legal action to either stop it from happening (injunctions), or to obtain money damages to compensate you for your losses.

Your employees are critical to protecting your confidential information. Make sure they understand what their obligations are – these should be set out in the contract of employment. When it comes to handling sensitive business information, make sure that they are clear about their responsibilities, the relevant rules, and the correct procedures. You can do this through the staff handbook. Do make sure you communicate it

and monitor your policy, too – then, if there is an issue, it will be easier to deal with any employee who has not followed it.

If you want to disclose confidential information to people outside of your business, you should put a Non-Disclosure Agreement (NDA) in place before you show it to anyone.

If you have an innovation, you must not show it to anyone else (unless you have a NDA in place), because if you do, you may not then be able to protect it with a patent.

What are trade secrets?

Some innovations are valuable but you can't get a patent for them. This is because they don't meet the standards of novelty and inventiveness required to get a patent. Also, sometimes it is best to keep an invention secret, even though you could get a patent for it. This is because the patent process involves publishing your innovation, which may not always be in your best interests. These are usually known as trade secrets, or know-how, and may include technical know-how or processes. One famous – and valuable - example would be the recipe for Coke. Trade secrets can only be protected by keeping them confidential.

What other practical steps should I take?

To protect your confidential information:

- only share it with others on a “need-to-know” basis
- discuss it verbally rather than in writing, if practical
- mark it clearly on documents as “CONFIDENTIAL” (or “COMPANY CONFIDENTIAL”, for internal documents)
- store it in a secure or electronic or physical area
- do not copy it more than you need to

If you have someone else’s confidential information:

- if you’ve signed an NDA, make sure you stick to what it says: in particular, make sure the other person’s information is only used for the authorised purpose, and not for anything else
- keep a record of when it is received, and who it is passed on to.
- delete, return or shred copies after use (subject to what any NDA says)

Do I need an NDA?

An NDA is a written agreement that sets out the conditions under which confidential information is to be disclosed. You should use one if you want to disclose confidential information to people outside of your business, you want to limit how it can be used, and for it to be kept secret.

Sometimes, third parties are already under obligations of confidentiality because of the nature of the working relationship – such as lawyers and contractors. In this case, you should check any written agreement to make sure your concerns are covered off.

If there isn’t already a written agreement, and for new relationships, the best way of ensuring that your information remains confidential is to have an NDA. It will help you to control the information, and to prove that the person receiving it has a legal duty to protect it.

There is no such thing as a ‘standard’ NDA. Individual businesses should have agreements customised for their particular needs. If you sign someone else’s NDA without first taking legal advice, you may get stuck with some risky obligations without realising it.

Here are some examples of NDAs which you could use, but remember, they may not be suitable for your needs:

- If you alone are disclosing information, the NDA should be one-way. You will find an example of a one-way NDA [here](#).
- If both you and the other business are disclosing information, the NDA should be mutual. You will find an example of a mutual NDA [here](#).

We recommend that you talk to a solicitor or legal advisor before you sign an NDA or disclose confidential information. New Leaf Law does not take any responsibility for any events that arise as a result of your use of these example NDAs.

Want more? See:
[Easy Guide to Intellectual Property](#)
[Easy Guide to Trade Marks](#)

[Call us](#) or [email us](#) for a chat about your requirements.