

## Trade Secrets and Noncompete Blog

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### Connecticut Supreme Court Rules That A Public Agency Can Create And Maintain Trade Secrets

The Supreme Court of Connecticut has ruled that a public agency, the University of Connecticut, can create and maintain trade secrets that are exempt from disclosure under the state's Freedom of Information Act ("FOIA"). The trade secrets are databases of customer lists identifying the persons who paid to attend, donated to, inquired about, or participated in educational, cultural or athletic activities at the University, such as season ticket holders, donors and program subscribers.

In [\*University of Connecticut v. Freedom of Information Commission\*](#), 303 Conn. 724, \_\_A. 3d\_\_ (Feb. 21, 2012), the Court rejected the State Freedom of Information Commission's decision that the University's databases could not be "trade secrets" under the FOIA disclosure exemption, based on the Commission's conclusion that the University was a public entity that did not engage in "trade." The Court ruled that a public agency that creates and maintains trade secret information is entitled to the same protection that would constitute a protected trade secret if the information was created by a private entity. The Court examined the nature of the information in the databases, the purposes for which the information was used, potential competitors and the economic benefit that the information might confer on competitors.

The Court concluded that the University is a public agency under the FOIA and required under the act to disclose public records, with certain exceptions, such as for trade secrets, including customer lists, that: (i) derive independent economic value, actual or potential, from not being generally known to and not readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use; and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy.

The Court reasoned that the FOIA definition focuses exclusively on the nature and accessibility of the information, not the status or characteristics of the entity creating and maintaining that information. Also, the definition of a "person" protected by the Connecticut Uniform Trade Secrets Act includes "government, governmental subdivision or agency or any other legal or commercial entity." There is no requirement that the entity must be engaged in a "trade." The Court found that the University spends considerable resources of the state, on its own or in partnership with others, for research and development of intellectual property and takes appropriate steps to maintain its secrecy. The Court concluded that the state's ability to recoup costs or reap the financial benefits for those efforts would be undermined if anyone could obtain the information by a simple FOIA request. Therefore, the information met the statutory criteria for a trade secret exempt from the FOIA request.

Consequently, the Court's decision allows a public agency, such as a public university, the same rights as a private person or entity to profit from research, investment and development of trade

secrets that otherwise meet the requirements of the Connecticut Uniform Trade Secrets Act.

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