Memorandum to Presidents

Date: December 9, 1985
From: Office of University Counsel and Vice Chancellor for Legal Affairs
Subject: Freedom of Information Law IX (Trade Secrets)
To: Presidents, State-Operated Campuses

The State University Board of Trustees has recently amended the regulations governing public access to University records to address the treatment of records containing trade secrets (Part 311 of Title 8, Official Compilation of Codes, Rules and Regulations of the State of New York). A copy of the Board action is attached.

Under the Freedom of Information Law, a State agency may deny access to records that are "trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise." (Public Officers Law §87[2][d]). Generally, a "trade secret" is defined as a formula, device or compilation of information which is not a matter of general knowledge in an industry and which therefore can be exploited commercially over competitors. The Freedom of Information Law requires each agency to provide for identification of records containing trade secrets, safeguard against unauthorized access to such records and set forth procedures for excepting such records from disclosure (L.1981, ch.890).

The amended University regulations insure that procedures are in place to comply with these requirements. State University's greater involvement in telecommunications and computer agreements as well as the growth in cooperative relationships with industry involving research and development have increased the likelihood that the University might maintain records containing trade secrets.
The regulations establish procedures which allow individuals who submit records to a campus which may contain trade secrets to make a written request to the campus records access officer that such records be excepted from disclosure. The records must be maintained apart from all other records and must not be disclosed until fifteen days after a final determination has been made. A denial of the request may be appealed to the Vice Chancellor for University Affairs and Development as the University's appeals officer under the Freedom of Information Law. An individual who is denied access to records because such records have been excepted from disclosure may also appeal. Additionally, the new procedures allow the records access officer to determine whether a previously granted exception to disclosure should be continued or terminated.

Finally, the amendments require that records containing trade secrets shall be maintained in a safe and secure manner and must be charged to the custody of the head of the department or office in which the records are filed. That individual is responsible for specifying the persons who may inspect such records.

Any questions concerning these amendments should be directed to the Office of University Counsel (518-473-7591).

Sanford H. Levine

Attachments

cc: Records Access Officers,
    State-Operated Campuses

Copies for information only sent to:

    Presidents, Community Colleges
    Deans, Statutory Colleges
    President Coll
    Vice Provost Spencer
Resolved that Part 311 of Chapter V of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York, adopted November 28, 1978, by Resolution 78-305, as last amended December 18, 1984 by Resolution 84-293, be, and hereby is, amended by renumbering sections 311.6, 311.7, 311.8 and 311.9 to become sections 311.7, 311.8, 311.9 and 311.10, respectively, and by adding a new section 311.6 to read as follows:

311.6 Records containing trade secrets

(a) Any person who submits records to the university may request that the university except such records or parts of such records from disclosure as trade secrets pursuant to sections 87(2)(d) and 89(5) of the Public Officers Law. The request for an exception shall be made in writing to the records access officer at the campus where the records have been submitted and shall state the reasons why the records should be excepted from disclosure. Such records shall be excepted from disclosure and maintained apart from all other records until fifteen days after the entitlement to such exception has been finally determined.

(b) The records access officer shall, at any time, or upon receipt of a request for access to such records, determine whether the request for exception will be granted, continued, terminated or denied. Before doing so, the record access officer shall:

(1) notify the person who requested the exception that a determination is to be made whether such exception should be granted or continued; and

(2) permit the person who requested the exception, within ten business days of receipt of such notification, to submit a written statement of the necessity for granting or continuing such exception.

(c) Within seven business days of receipt of such statement or of the expiration of the period prescribed for submission of such statement, the records access officer shall issue a written determination granting, continuing, terminating or denying the exception and stating the reasons therefor. Copies of such determination shall be transmitted to the person, if any,
requesting the records, the person who requested the exception and the Committee on Open Government.

(d) A denial of an exception from disclosure may be appealed by the person submitting the records and a denial of access to the records may be appealed by the person requesting the records. The following person shall hear such appeals:

Vice Chancellor for University Affairs
and Development, or designee
State University of New York
State University Plaza
Albany, New York 12246
Telephone: (518) 473-1825

The appeal shall be in writing and shall be made within seven business days of receipt of a denial. The appeal shall be determined within ten business days of receipt of the appeal. Written notice of the determination and a statement of reasons for the determination shall be served upon the person, if any, requesting the records, the person who requested the exception and the Committee on Open Government.

(e) Records or parts of records identified as trade secrets shall be maintained in a safe and secure manner and shall be charged to the custody of the head of the department or office in which the records are filed. That individual shall specify which persons subject to his supervision may inspect such records. The records access officer, the Deputy to the Chancellor for Central Administration Services, or designee, and the Vice Chancellor for University Affairs and Development, or designee, shall have the right to inspect such records.

and, be it further

Resolved, that section 311.7, as renumbered, is amended by relettering subdivisions (a), (b), (c), (d), (e), (f) and (g) to become subdivisions (b), (c), (d), (e), (f), (g) and (h), respectively, and adding a new subdivision (a) to read as follows:

(a) This section shall not apply to records or parts of records alleged to contain trade secrets.