

CONFIDENTIAL RESEARCH AND INVESTMENT INFORMATION ACT

Act 55 of 1994

AN ACT to protect from public disclosure certain information obtained in research and related activities of public universities and colleges; to protect from public disclosure certain investment information received by a public university or college from an investment fiduciary or portfolio company; and to prescribe certain duties of public universities and colleges.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994 ;-- Am. 2004, Act 86, Imd. Eff. Apr. 22, 2004

The People of the State of Michigan enact:

390.1551 Short title.

Sec. 1.

This act shall be known and may be cited as the "confidential research and investment information act".

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994 ;-- Am. 2004, Act 86, Imd. Eff. Apr. 22, 2004

390.1552 Definitions.

Sec. 2.

As used in this act:

(a) "Commercial information" means information regarding the purchase and sale of goods and services, including, but not limited to, information regarding marketing strategy, production data, assessments of goods and services, mineral exploration records, and compilations of data regarding commercial activity.

(b) "Financial information" means information regarding finances, including, but not limited to, assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

(c) "Intellectual property" means all original data, findings, or other products of the mind or intellect commonly associated with claims, interests, and rights that are protected under trade secret, patent, trademark, copyright, or unfair competition law.

(d) "Investment" means the utilization of money or other assets in the expectation of future returns in the form of income or capital gain.

(e) "Investment fiduciary" means a person who exercises any discretionary authority or control over an investment of a public university or college or renders investment advice for a public university or college for a fee or other direct or indirect compensation.

(f) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

(g) "Portfolio company" means an entity in which an investment fiduciary has made or considered an investment on behalf of a public university or college.

(h) "Public university or college" means a university, college, or community college established under section 5, 6, or 7 of article VIII of the state constitution of 1963.

(i) "Record" means all or part of a writing, as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

(j) "Trade secret" means information consisting of a valuable unpatented formula, pattern, device, or process, or other information that is used in a business and gives the possessor of the information a competitive advantage over those who do not know or use the information, and for which sufficient measures have been taken to guard the

secrecy of the information and preserve its confidentiality, and that does not encompass information that is readily ascertainable by competitors or the general public without undue difficulty or hardship.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994 ;-- Am. 2004, Act 86, Imd. Eff. Apr. 22, 2004

390.1553 Information provided to public university or college by private external source; exemption from disclosure; conditions; affirmative duty to notify agencies; applicability of subsection (1) to information regarding sold or marketed product or process.

Sec. 3.

(1) Except as otherwise provided in this section, trade secrets, commercial information, or financial information, including that information as it relates to computer hardware and software, that is provided to a public university or college by a private external source and that is in the possession of the public university or college in the performance of a lawful function is exempt from disclosure as a public record under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, if all of the following conditions are met:

(a) The information is used exclusively for research, testing, evaluation, and related activities.

(b) The information is clearly designated by the external source before or at the time it is received by the public university or college as being confidential.

(c) The public university or college has entered into an agreement to keep the information confidential, and the confidentiality agreement was authorized by the chief administrative officer of the public university or college, or his or her designee.

(d) A document containing a general description of the information to be received under the confidentiality agreement, the term of the confidentiality agreement, the name of the external source or person with whom the confidentiality agreement was made, and a general description of the nature of the intended use for the information is recorded by the public university or college within 20 regular working days after it is received, is maintained in a central place within the public university or college, and is made available to a person upon request. The description of the information to be received shall be sufficient to provide the public with the necessary information to understand the nature of the research or product involved in the confidentiality agreement.

(2) Subsection (1) does not apply to information that meets both of the following:

(a) Is otherwise publicly available.

(b) Is submitted as required by law or as a condition of receiving a government contract, license, or other benefit.

(3) To the extent that the information indicates a substantial likelihood that a person may be killed or injured by the use of the product or process, a public university or college has an affirmative duty to take reasonable measures to promptly notify appropriate local, state, and federal regulatory agencies of information regarding a product or process that is in the stream of commerce at the time the public university or college receives the information or actively uses the information in its research, and subsection (1) does not apply to the information. The affirmative duty described in this subsection is not intended to and does not create a separate or additional liability or cause of action outside of the remedies provided for in Act No. 442 of the Public Acts of 1976. A provision of a contract between a public university or college and another person that conflicts with this subsection is void for the purposes of this act as a matter of public policy. However, the affirmative duty described in this subsection does not apply to information described in this subsection if 1 or more of the following apply:

(a) There already exists a duty upon the manufacturer, distributor, seller, or owner of the product or process to disclose the information to a regulatory agency and the public university or college does not have actual knowledge that the information has not been disclosed in accordance with that duty.

(b) The hazards of the product or process are obvious to the user or consumer.

(c) The hazards of the product or process are disclosed to the user or consumer in recommendations, warnings, or other instructions supplied to the user or consumer by the manufacturer, distributor, seller, or owner of the product or process.

(4) To the extent that the information and its commercial value are capable of being adequately protected by copyright, patent, or trademark protection and are not encompassed by a pending, unissued patent application, subsection (1) does not apply to information regarding a product or process if the public university or college is selling or marketing the product or process to the general public.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994

390.1554 Information in which interest held, or owned, prepared, used, retained by, or in possession of public university or college; exemption from disclosure; applicability of subsection (1) to information regarding sold or marketed product or process; applicability of MCL 390.1553(3).

Sec. 4.

(1) Except as otherwise provided in this section, the following information in which a public university or college holds an interest, or that is owned, prepared, used, or retained by, or in the possession of, a public university or college, is exempt from disclosure as a public record under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws:

(a) Intellectual property created by a person employed by or under contract to a public university or college for purposes that include research, education, and related activities, until a reasonable opportunity is provided for the information to be published in a timely manner in a forum intended to convey the information to the academic community.

(b) Original works of authorship fixed in any tangible medium of expression created by a person employed by or under contract to a public university or college for purposes that include research, education, or related activities, until a reasonable opportunity is provided for the author to secure copyright registration, not to exceed 12 months from the date the work is first fixed in a tangible medium of expression.

(c) Records regarding a process, a machine, an item of manufacture, or a composition of matter, or any new and useful improvement of a process, a machine, an item of manufacture, or a composition of matter, until a reasonable opportunity is provided for the inventor to secure patent protection, not to exceed 5 years from the date the records are first made.

(d) Trade secrets or other proprietary information in which a public university or college holds an interest or that a public university or college owns that is determined by the public university or college to have potential commercial value, if a general description of the nature of the information and a description of the extent of the interest held by the public university or college in the information is made available to a person upon request.

(2) To the extent that the information and its commercial value are capable of being adequately protected by copyright, patent, or trademark protection and are not encompassed by a pending, unissued patent application, subsection (1) does not apply to information regarding a product or process if the public university or college is selling or marketing the product or process to the general public.

(3) Section 3(3) applies to information described in this section that is provided by a private external source.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994

390.1554a Records received, prepared, used, or retained by investment fiduciary; confidentiality.

Sec. 4a.

(1) Subject to subsection (2), a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of a public university or college that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential, or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential, is exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, if at least annually the public university or college provides to its governing board, and makes available to the public, a report of its investments that includes all of the following:

(a) The name of each portfolio company in which the public university or college invested during the reporting period.

(b) The aggregate amount of money invested by the public university or college in portfolio companies during the reporting period.

(c) The rate of return realized during the reporting period on the investments of the public university or college in portfolio companies.

(d) The source of any public funds invested by the public university or college in portfolio companies during the

reporting period.

(2) If a record described in subsection (1) is an agreement or instrument to which an investment fiduciary is a party, only those parts of the record that contain investment information are exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 2004, Act 86, Imd. Eff. Apr. 22, 2004

390.1555 Ability to engage in independent projects not limited.

Sec. 5.

This act does not limit the ability of a person employed by or under contract to a public university or college to engage in lawful projects independent of a public university or college, or prohibit such a person from disclosing information regarding those independent projects or from receiving pecuniary income from those independent projects.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994

390.1556 Construction of certain provisions of act.

Sec. 6.

The provisions of this act exempting information from disclosure shall be strictly construed.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994

390.1557 Response to request for information; procedures.

Sec. 7.

A person receiving a request under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, for information exempt from disclosure under this act shall comply with the procedures and requirements of Act No. 442 of the Public Acts of 1976 in responding to the request and shall also provide to the person making the request a general written description of the information and a written explanation of the reason the request has been denied.

History: 1994, Act 55, Imd. Eff. Apr. 5, 1994