

§15302-A. Confidentiality; freedom of access

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances. [PL 2001, c. 562, §2 (NEW).]

B. "Grant" means any disbursement of funds through grants or other financial awards to private companies, targeted technology incubators or nonprofit organizations, pursuant to section 15303, as well as any investment of funds, equity investment, securities, loan, contractual arrangement or other evidence of indebtedness authorized by section 15304. [PL 2001, c. 562, §2 (NEW).]

C. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process. [PL 2001, c. 562, §2 (NEW).]
[PL 2001, c. 562, §2 (NEW).]

2. Proceedings; records; confidentiality. The proceedings of the board and the records of the institute are public for the purposes of Title 1, chapter 13, except that the following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the board prior to receipt of a written application or proposal in a form acceptable to the board for either financial assistance from the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection; [PL 2001, c. 562, §2 (NEW).]

B. A peer review or analysis or other document related to the evaluation of a grant application or proposal; [PL 2001, c. 562, §2 (NEW).]

C. A record that the person, including the institute, to whom the record belongs or pertains has requested be designated confidential and that the institute has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the institute's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other institute interests, such as program effectiveness and compliance; [PL 2001, c. 562, §2 (NEW).]

D. A financial statement, credit report or tax return of an individual or other record obtained or developed by the board, the disclosure of which would constitute an invasion of personal privacy as determined by the board; [PL 2001, c. 562, §2 (NEW).]

E. A record, including a financial statement or tax return obtained or developed by the board in connection with monitoring or servicing activity of the board, pertaining to financial assistance provided or to be provided by or with the assistance of the board; [PL 2001, c. 562, §2 (NEW).]

F. A record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of a person or project; [PL 2001, c. 562, §2 (NEW).]

G. A financial statement or business and marketing plan in connection with a project receiving or to receive financial assistance from the board, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and [PL 2001, c. 562, §2 (NEW).]

H. Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057. [PL 2001, c. 562, §2 (NEW).]
[PL 2001, c. 562, §2 (NEW).]

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board may, in its discretion, make or authorize a disclosure of impersonal, statistical or general information or may make or authorize disclosure of information:

A. If necessary in connection with processing an application for or obtaining or maintaining financial assistance for a person or in connection with acquiring, maintaining or disposing of property; [PL 2001, c. 562, §2 (NEW).]

B. To a financing institution or credit reporting service; [PL 2001, c. 562, §2 (NEW).]

C. If necessary to comply with any federal or state law or rule or with an agreement pertaining to financial assistance; [PL 2001, c. 562, §2 (NEW).]

D. If necessary to ensure collection of an obligation in which the board has or may have an interest; [PL 2001, c. 562, §2 (NEW).]

E. Obtained from records declared confidential by this section for introduction for the record in litigation or a proceeding in which the board has appeared; or [PL 2001, c. 562, §2 (NEW).]

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 2001, c. 562, §2 (NEW).]
[PL 2001, c. 562, §2 (NEW).]

4. Public information. Notwithstanding subsection 2, the institute shall make available the following information upon request:

A. Names and addresses of recipients of or applicants for financial assistance, including principals where applicable; [PL 2001, c. 562, §2 (NEW).]

B. Amounts, types and terms of financial assistance provided to recipients or requested by applicants, including, without limitation, repayment period, security and rights of the institute to receive royalties and other payments, if any; [PL 2001, c. 562, §2 (NEW).]

C. General descriptions of projects and businesses benefiting or to benefit from financial assistance; [PL 2001, c. 562, §2 (NEW).]

D. Names of transferors or transferees, including principals, of property to or from the institute, the general terms of transfer, the transfer instrument or agreement and the purposes for which the transferred property will be used; [PL 2001, c. 562, §2 (NEW).]

E. Number of new jobs created, the number of patents and copyrightable works produced, information identifying the patents and registered copyrightable works produced, the amount of royalties or returns on equity investments received by the institute or the amount of repayments received by the institute in connection with institute grants, except for information that would place a recipient of or an applicant for financial assistance at a competitive disadvantage; [PL 2001, c. 562, §2 (NEW).]

F. Policies concerning institute governance, operations or procedures for review or funding of applications; and [PL 2001, c. 562, §2 (NEW).]

G. Any information pursuant to waiver considered satisfactory by the institute. [PL 2001, c. 562, §2 (NEW).]
[PL 2001, c. 562, §2 (NEW).]

5. Construction. This section must be strictly construed to protect the confidentiality of all documents designated as confidential, the confidentiality of which is essential to the technology development purpose of the institute and to the confidence of the private sector in the institute and its mission.

[PL 2001, c. 562, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 562, §2 (NEW).

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