

CONFIDENTIAL RESEARCH AND INVESTMENT INFORMATION ACT (EXCERPT)
Act 55 of 1994

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.