



## Keeping your Trade Secrets a Secret: Three common myths about trade secret protection that could put your business's trade secrets at risk.

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Due to its widespread and relatively easy use, most businesses rely on state or federal trade secret laws to protect their intellectual property. Understanding trade secret protection is essential to safeguard your business's valuable intellectual property. Misconceptions about trade secrets can leave your business vulnerable to misappropriation or loss of protection. This blog post will address three common myths many business leaders have about protecting their trade secrets.



### Myth Number One: All Confidential Information is a Trade Secret.

Not all of your business's confidential information qualifies for trade secret protection. It's essential to understand the distinction between confidential information and trade secrets. While all trade secrets contain confidential information, not all confidential information qualifies as a trade secret. If you graphed these concepts as a Venn diagram, your business's trade secrets would be the smaller circle inside the more prominent "confidential information" circle.

Under most Uniform Trade Secret Acts adopted by individual states and the federal Defense of Trade Secrets Act, to be considered a trade secret, the business information must:

- Have economic value derived from not being generally known or easily discoverable; and
- Be subject to reasonable efforts to maintain its secrecy.



Common examples of legally recognized trade secrets include proprietary formulas, manufacturing processes, pricing lists, and customer lists. However, general business information, employee data, or other information your business keeps from prying eyes may only meet the criteria for trade secret protection if it has a competitive economic use for your business. Knowing the difference between these essential concepts is critical to understanding where your business should focus its limited resources to protect its trade secrets.



### Myth Number Two: Trade Secrets are Automatically Protected

Businesses utilize numerous tools to protect their intellectual property. Some prefer to rely on patents, copyrights, and trademarks to ensure they have the exclusive right to some vital intellectual property. Businesses often protect intellectual property through written contracts governed primarily by state law, such as non-competition, non-solicitation, confidentiality, and non-disclosure agreements. Businesses also rely on intellectual property protection via the Uniform Trade Secret Acts passed by nearly every state and the federal Defense of Trade Secrets Act.

Unlike patents, copyrights, or trademarks, trade secrets do not require registration to qualify for legal protection. This does not, however, mean they are automatically protected. Business leaders must take active steps to maintain the secrecy of their trade secrets. Failure to do so may result in critical trade secrets losing trade secret protection.

To ensure the protection of your trade secrets, you should:

- Implement confidentiality agreements for employees, contractors, and business partners;
- Establish access controls and limit the disclosure of trade secrets to those with a legitimate need-to-know basis;
- Provide employee training on trade secret protection and confidentiality obligations;
- Regularly audit and update security measures to maintain the secrecy of your trade secrets.



Whether you rely on your state's version of the Uniform Trade Secrets Act or the federal Defense of Trade Secrets Act to protect your business's trade secrets, these measures are a solid start to ensuring that your business is afforded these statutory protections. For a more detailed discussion about the steps your business can take to protect its trade secrets visit my recent blog post: [The Rising Importance of Trade Secret Protection in the Coming Era of Non-compete Ban: Two Steps Your Business Needs to Take Now.](#)



### Myth Number Three: Trade Secret Protection Lasts Forever

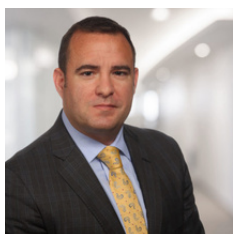
While trade secret protection can last indefinitely, remember that confidential information's status as a trade secret hinges on it remaining secret and valuable. With time, trade secrets often lose economic value. Depending on the industry and the speed with which it grows and changes, confidential information that keeps your business competitive becomes obsolete. Trade secrets also lose economic value as competitors independently discover or develop similar information. Likewise, trade secrets can lose their status when they are no longer a secret. This happens more frequently than not when a business fails to take reasonable steps to keep valuable confidential information a secret. Businesses with inconsistent policies, weak nondisclosure or confidentiality agreements, and inadequate training are the most vulnerable.

By planning, businesses can ensure their trade secrets last as long as possible. Policies, practices, and an active culture to protect the business's trade secrets from the ground up are essential. Continued and proactive monitoring of the established protective measures ensures that established and newly developed trade secrets are afforded this protection. Businesses must be prepared to defend their trade secrets against misappropriation or inadvertent leaks when required. Remember, it cannot be regained once trade secret protection is lost.



### Conclusion: Separating Trade Secret Myths from Trade Secret Reality is essential to Understanding how to Maximize Trade Secret Protection

Business leaders must understand the nuances of trade secret protections to effectively protect their businesses' economically valuable intellectual property. And while trade secret laws may vary across jurisdictions, they are rooted in protecting confidential information that businesses utilize to create economic value and take reasonable measures to keep secret. By understanding the core basis for trade secret protection, you can recognize other myths and misconceptions about trade secrets when you hear them. Effective use of trade secret protection, combined with the help of other tools, is essential to safeguard your business's intellectual property and maintain its competitive edge.



#### About the Author

For more than twenty years, [Richard L. Hathaway](#) has litigated non-competition, non-solicitation, trade secrets, and other matters protecting business innovation. He has successfully enforced his business clients' agreements and rights in Texas state or federal court, and in arbitration. In fact, he has recently obtained a multi-million dollar arbitration award for a business against a former employee for misappropriating trade secrets. He and his team are available to assist your business in protecting its trade secrets via a policy and training review or aggressively pursuing available legal avenues. He is available via email at: [rhathaway@krcl.com](mailto:rhathaway@krcl.com) and phone at: 214-777-4270.