



Three Key Considerations for Trade Secret Owners Seeking Protection Under the Texas Uniform Trade Secrets Act

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In today's competitive marketplace, a company's most valuable assets are often not found on its balance sheet. The proprietary formulas, customer databases, pricing models, and operational processes that give businesses their competitive edge represent intellectual capital that can literally be worth millions—or lost in an instant. As innovation drives business success, protecting these trade secrets has become critical to maintaining market position and profitability.

The threat to confidential business information is real and growing. Former employees may walk out the door with customer lists stored on personal devices. Competitors might attempt industrial espionage to gain access to proprietary processes. Even trusted insiders can become bad actors, copying sensitive data for personal gain. When trade secrets are compromised, the financial and competitive damage can be devastating and irreversible.

Fortunately, Texas businesses have a powerful legal tool at their disposal. The Texas Uniform Trade Secrets Act (TUTSA), found in Chapter 134A of the Texas Civil Practice and Remedies Code, creates a comprehensive framework for protecting trade secrets and pursuing claims when misappropriation occurs. While the federal Defend Trade Secrets Act (DTSA) provides similar protections for trade secrets involving interstate commerce, TUTSA serves as the primary vehicle for Texas companies seeking to safeguard their confidential information.

However, TUTSA protection isn't automatic. Successfully leveraging the Act—and more importantly, preventing trade secret theft before it happens—demands strategic preparation, robust internal safeguards, and meticulous documentation. Companies that treat trade secret protection as an afterthought often discover too late that their most valuable competitive advantages have walked out the door with a departing employee, and they are unable to establish facts necessary to invoke the Act's protection.

This article outlines three critical considerations for trade secret owners seeking to effectively protect trade secrets using TUTSA:

1. What type of information generally qualifies as a trade secret under TUTSA.
2. What it means to establish economic value from the secrecy of the trade secret.
3. What it means to properly implement “reasonable measures” to maintain secrecy.

Consideration No. 1: Defining a Trade Secret Under TUTSA

When it comes to protecting trade secrets, one of the most common and costly mistakes businesses make is assuming that any confidential or sensitive business information qualifies automatically as a trade secret. There is almost an absolute certainty that businesses possess confidential or proprietary information to which they have contractually agreed or are required by statute to protect and keep confidential. However, even those categories of information may not meet TUTSA's definition of “trade secret.”

TUTSA's Definition of a “Trade Secret”

Under Tex. Civ. Prac. & Rem. Code § 134A.002(6), a trade secret is:

“...information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

In summary, to be a “trade secret” the information at issue must generate economic value from its secrecy, and its owner must take reasonable efforts. This means not all of a business's internal data or confidential information is a trade secret subject to TUTSA protection.

Looking Past the Definition: What Is—and Isn't—a Trade Secret

Courts applying the TUTSA to trade secret misappropriation claims are an excellent source of guidance on the issue of what is, and what is not, a trade secret. Courts determine whether something is a trade secret by examining six factors: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and other involved in the business; (3) the extent of the measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of money or effort expended by the business to develop the information; and (6) the ease or difficulty with which others could properly acquire or duplicate the information. Because not all trade secrets are going to fit into each of these factors, the owner of a trade secret is not required to prove all six factors to establish that its information is a trade secret.

Because the determination of whether something is a trade secret is so specific, the list provided below is illustrative of examples based on court findings and the circumstances in those matters. It is by no means exhaustive or conclusive.

Likely to Qualify:

- Pricing models developed through confidential financial analysis.
- Proprietary algorithms not publicly disclosed.
- Detailed customer lists with contact, preference, and historical data.
- Internal manufacturing or operational processes that offer competitive advantage.

Unlikely to Qualify:

- Publicly available marketing brochures or information disclosed on business's web page.
- General knowledge within an industry.
- Employee skillsets or experiences acquired through training (absent restrictions).
- Vague references in employment agreements or policies to "company knowledge" or "approach."

Practical Tip: If possible, keep a loose inventory of what your business considers trade secrets. Assign responsibility for reviewing and annually updating the inventory to align with updated procedures, practices, and developments.

Consideration No. 2: Establishing Independent Economic Value from Secrecy Under TUTSA

A critical component in establishing TUTSA trade secret protection is demonstrating that the information at issue "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from its disclosure or use." This requirement underscores the idea that for information to qualify as a trade secret, its secrecy must provide the business with an actual competitive advantage or potential economic benefit that would be compromised if the information became publicly available or easily replicated by competitors.

To illustrate, proprietary pricing models may enable a company to undercut competitors strategically, securing lucrative contracts or market shares. Similarly, algorithms or processes that enhance operational efficiency can substantially reduce production costs or delivery times, giving the business a measurable advantage over competitors. If these elements become public knowledge or easily accessible through legitimate business practices, their economic value to the owner diminishes significantly, highlighting their dependence on secrecy. Another way to establish that the trade secret is economically valuable is to demonstrate the windfall that competitors would obtain from not having to incur costs or manhours developing the information at issue.

Along those lines, Courts evaluating economic value under TUTSA often consider whether competitors would benefit materially from gaining access to such information. For example, detailed customer lists that include purchasing histories, preferences, and direct contacts can significantly streamline a competitor's marketing and sales efforts. The inherent competitive advantage provided by secrecy, along with the cost associated with gathering and organizing this information into a usable list, underscores the independent economic value of such information.

Practical tip: Businesses should document how specific confidential information creates measurable economic advantages, directly linking secrecy to competitive and financial benefits. Such documentation can significantly strengthen a claim under TUTSA, clearly demonstrating the critical economic stakes involved if secrecy is compromised.

Consideration No. 3: Reasonable Efforts to Maintain Secrecy:

Under TUTSA, protection is only available if the owner of the trade secret took reasonable efforts to guard its secrecy. Texas courts will not protect information the owner took no efforts to protect. Those businesses that intend to rely on TUTSA to protect trade secrets would be wise to develop a culture of secrecy when it comes to the development, usage, and protection of trade secrets.

What Courts Consider “Reasonable Efforts”

There is no one-size-fits-all checklist, but courts applying TUTSA have identified several key factors that warrant the protection of a trade secret:

- Access Control: Limiting who can access sensitive data.
- Confidentiality Agreements: Having signed NDAs and non-disclosure clauses in employment or contractor agreements.
- Labeling: Marking documents and files as “confidential.”
- IT Security: Use of passwords, VPNs, encryption, and access logs.
- Policy Enforcement: Having clear, enforced policies on data access, storage, and sharing.
- Exit Protocols: Ensuring departing employees return devices and data and acknowledge continuing confidentiality obligations.

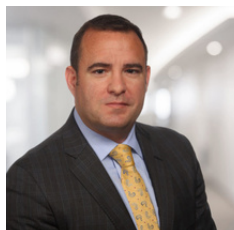
The more protections a business has in place, the easier it is to establish that the business took reasonable efforts to protect the information at issue. Businesses should also ensure that the DTSA's whistleblower disclosure is included in either their employment agreements or the employee manual that the employment agreement incorporates. Failure to comply with 18 U.S.C § 1833(b) could undermine an owner's ability to recover exemplary damages and attorneys' fees when pursuing TUTSA or DTSA claims in Court.

Practical Tip: Documentation matters. Policies, signed agreements, and audit trails should be maintained to demonstrate efforts to protect trade secrets.

Key Takeaways:

Ensuring that your business has complied with these three key considerations is essential to availing itself to the TUTSA's many protections and litigation tools.

- The economic value of trade secrets must be directly linked to their secrecy, and this connection should be thoroughly documented and regularly updated.
- Businesses must proactively protect trade secrets through clear documentation, meticulous record-keeping, and rigorous enforcement of confidentiality practices.
- Demonstrable and systematic secrecy measures significantly enhance the likelihood of successful enforcement actions under TUTSA.



About the Author

For more than twenty years, [Richard L. Hathaway](#) has assisted businesses in numerous industries to navigate any obstacles necessary to protecting and preserve its intellectual property. He has successfully enforced his business client's intellectual property and protected their rights in arbitration and in Texas state and federal courts. He and his team are available to assist your business in safeguarding its intellectual and tangible assets. If you have questions about this blog or how he can help you and your business, you can reach him via email at: Rhathaway@krcl.com and via phone at 214-777-4270.