Industries' Proprietary Information and the Freedom of Access to State-Held Information: A Review of the Law and Its Implications for Special Interest Businesses

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INDUSTRIES’ PROPRIETARY INFORMATION AND THE FREEDOM OF ACCESS TO STATE-HELD INFORMATION: A REVIEW OF THE LAW AND ITS IMPLICATIONS FOR SPECIAL INTEREST BUSINESSES

Shannon E. Martin*
Jessica Brophy**

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I. INTRODUCTION

Every state in the United States has laws that make government documents available for inspection.¹ Many of these state laws are variously referred to as “freedom of information,”² “freedom of access,”³ or “public information access”⁴ acts. These various state laws also include exemptions or exceptions to the general provisions of open access. As technology has changed, government business practices and security concerns have altered the public needs for and uses of government-held information in the twenty-first century. Many states are now re-examining what the rights and responsibilities of holding and releasing government-gathered information ought to be. The following research reviews one aspect of the current debate and focuses on how Maine is proactively re-evaluating its freedom of access laws in light of business practices and state contracts.

II. BACKGROUND

Maine’s Freedom of Access Act (FOAA), signed into law in 1975, “declares that public proceedings exist to aid in the conduct of the people’s business.”⁵ The section goes on to note that government action should be “taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.”⁶ Maine’s FOAA specifically defines “public records” as any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business . . . .⁷

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¹. For a web site examining the openness of the states’ records’ see the Marion Brechner Citizen Access Project at http://www.citizenaccess.org (last visited Apr. 17, 2007).
⁴. See, e.g., ME. REV. STAT. ANN. tit. 1, § 531 (Supp. 2006).
⁵. ME. REV. STAT. ANN. tit. 1, § 401.
⁶. Id.
⁷. ME. REV. STAT. ANN. tit. 1, § 402(3) (Supp. 2006).
This definition is followed by fifteen exemptions with the most recent being personal contact information of public employees.

During the intervening years between the initial legislation and today, the Maine legislature and the state’s courts have provided hundreds of exceptions to the general principle articulated in Maine’s FOAA. These exemptions have ranged from provisions of the Maine Dairy and Nutrition Council to the data collection and dissemination of toxic use and hazardous waste reports generated by the Toxics Use, Toxics Release and Hazardous Waste Reduction Program.

More recently, Maine initiated several programs to support new and expanding industry in the state. These include the Pine Tree Development Zones, Maine Quality Centers and Governor’s Training Initiative, as well as technology tax credits and reimbursements. The intention is to encourage new businesses to supersede the older industries that are struggling in today’s markets. The nexus of Maine’s FOAA and its industry initiatives is where tax dollars support research and how that research should or could be made public, especially to competitors within particular industries.

Many state governments are struggling with the problem of public access to government-held information that lawmakers may not have envisioned as public information. For example, the Alaska Attorney General was asked in 1978 to issue an opinion on whether the Alyeska Pipeline Service Company documents filed with the State Pipeline Coordinator’s Office should be available as public documents to

8. Id. § 402(3)(A)–(O) (Supp. 2006).
11. All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter L, except that by majority vote of those members present records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council.

the competing Northwest Pipeline Company.\textsuperscript{17} The attorney general’s memorandum said that these documents were probably public records.\textsuperscript{18} In 1981, the Kansas Court of Appeals considered whether Southwestern Bell Telephone Company could protect as trade secrets, from the Kansas equivalent of the FOIA, documents submitted to the state supporting a requested rate increase.\textsuperscript{19}

Every state in the nation has similar examples of exemptions that specifically affect business and industry.\textsuperscript{20} Washington allows exemptions for information about the specifics of financing life sciences research.\textsuperscript{21} Another similar example is that South Carolina requires that university foundations who receive public funds in the form of federal grants for research must respond to requests for public information,\textsuperscript{22} while Oregon courts question the fees imposed for access to logs kept by a university for animal research facilities.\textsuperscript{23} And in a slightly different view, the Louisiana Court of Appeals found that a committee concerned with the oversight of a state agency that deals with experiments on animals was not governed by state information access laws because the committee was controlled by federal regulations.\textsuperscript{24} The lists of exemptions are unique to each state, as are the eligible public reviewers. Several states require that information access is made available only to state residents or citizens.\textsuperscript{25}

The following research reviews some of the specific exemptions affecting industry and business. Maine is used as an example so that both advocates and detractors of any state’s FOIA laws can assess the usefulness of the statutes and exemptions within each state’s commercial environment.

III. LITERATURE REVIEW

Concerns about public access to government-held information are not new. Scores of articles and books have explained the value of information access laws,

\textsuperscript{17} Memorandum from Avrum M. Gross, Att’ y Gen., Alaska, to Robert E. LeResche, Comm’r, Alaska Dep’t of Natural Res. (April 10, 1980) (on file with authors).
\textsuperscript{18} Id. at 3.
\textsuperscript{20} See COMM. TO STUDY COMPLIANCE WITH MAINE’S FREEDOM OF ACCESS LAWS, supra note 10, and Appendix.
\textsuperscript{21} WASH. REV. CODE ANN. § 42.56.270(14) (West Supp. 2007).
and they have frequently pointed to the difficulties in enforcement as well as accessibility at both the state and federal levels. In Maine particularly, a 1999 article in the Maine Bar Journal noted dozens of exemptions that permitted government discussion and deliberation in secret despite FOAA laws. However, few articles have examined the issue of government-sponsored private sector research and the requirements of public access to that information.

Among the few examples is an article published in 1989 that discussed the value and need for chemical toxicity data to be more broadly available and distributed. The author suggested that frequently the most current information about research advances and dangers was developed by industries with little incentive to share the information with a broader public. The author asserted that it was in the public’s best interest to promote the sharing of such information in order to save lives and reduce liability related to chemical exposure. The author concluded that information access laws, like Freedom of Information Act or FOAA, have functioned only as reactive tools in research and development industries and their surrounding communities, rather than as proactive information-distribution facilitators for these constituencies.

Similarly, in 2003, research by Reichman and Uhlir suggested that science data generators often used intellectual property rights to protect information from circulation rather than encourage distribution as many scholars insist is appropriate. Their article reports that since universities and scientists have increasingly commercialized their research products, the willingness to share data with other researchers has suffered. Now it seems there are high transaction costs for inter-university data exchanges where there used to be a far freer flow of information. The authors continue by suggesting that “[a]s relations between universities and industry become more intense, the ability of the industrial partners to impose restrictions on the open availability of research data also increases.”

Reichman and Uhlir further argue against a database protection law because it


29. Id.

30. Id. at 1808–09.

31. Id. at 1825–35.


33. Id. at 341–43.

34. Id. at 404–08.

35. Id. at 461.
“would remove data from their traditional public domain status under copyright law”:

Database rights, when added to other economic and technical pressures, could thus become the hub of an enclosure process that progressively fences off the public domain for scientific data and undermines its functions. This process could greatly reduce the flow of data as a basic input into both scientific research and the national system of innovation.

The authors encourage, instead, that the results of research funded by the government should be pooled, facilitating more access rather than less.

IV. RESEARCH QUESTIONS

This Article addresses the conflict between Maine’s FOAA and Maine’s industry in deeming what information should be publicly available despite its possible characterization as proprietary. The following questions guided the research:

1. What are the areas of law among the Maine Revised Statutes that provide exemptions to the general FOAA laws which might require private industries to disclose proprietary-sensitive information?
2. Which industries are vulnerable?
3. What information is excluded from public view?
4. Are there instances of disclosure when industry thought the information should have been protected?
5. What were the effects of this disclosure?
6. Are there similar situations in other states?

V. RESEARCH METHODS

Statutes, case law, news articles, and committee reports were collected and reviewed by using Lexis’s libraries for state law and news. Search strings included the title of a state’s particular law and were developed with words like proprietary, trade secret, disclose, business, and industry in order to limit hits. Cases were then examined for relevancy and organized by state and then year. For example, search strings such as “(freedom w/1 access) or (FOA) and disclos! and proprietary” or “(freedom w/1 access) public and disclos! and grant” in Maine cases returned five and thirty-eight hits respectively, as of May 18, 2005.

36. Id.
37. Id. at 461–62.
38. Id. at 462.
In searching for parallel situations in other states, the researchers acknowledge that freedom of information access laws vary in naming conventions. To more successfully search both the Lexis state law and news libraries, search strings were sought through proper name identification by searching first through the Marion Brechner Citizen Access Project.\(^{39}\) The Maine Freedom of Access Coalition reports as well as Maine legislative committee reports were accessed through web sites as noted. Search strings for state cases outside of Maine included “(open w/1 records) or (freedom w/1 information) and disclos! and busin! or indust!” for Kentucky; “(public w/2 records) and disclos! and busin! or indust!” for Colorado; and “(freedom w/1 information) and disclos! and busin! or indust!” for Delaware. Variations of this string returned as few as six hits (Alaska) and as many as 552 hits (Texas).

VI. FINDINGS

Maine’s FOAA declares that all government-held documents are public records with the exception of those records exempt from review.\(^{40}\)

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40. Me. Rev. Stat. Ann. tit. 1, § 402(3) (Supp. 2006). Exemptions include the following:
   A. Records that have been designated confidential by statute;
   B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;
   C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by an Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;
   D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;
   E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;
   F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;
   G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in
There are, however, exceptions beyond the fifteen specifically listed in the Title 1

the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, “terrorism” means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For purposes of this paragraph:

(1) “Personal contact information” means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) “Public employee” means an employee of a governmental entity, as defined in Title 14, section 8102, subsection 2, except that “public employee” does not include elected officials.

*Id. § 402(3)(A)-(O).*
original act that number in the hundreds. According to a recent review by a legislative committee, the following titles of the *Maine Revised Statutes* include FOAA exclusion provisions:

*Title 1 General Provisions, Title 3 Legislature, Title 4 Judiciary, Title 5 Administrative Procedures, Title 7 Agriculture and Animals, Title 8 Amusements and Sports, Title 9-A Maine Consumer Credit Code, Title 9-B Financial Institutions, Title 10 Commerce and Trade, Title 12 Conservation, Title 13 Maine Business Corporation Act, Title 14 Court Procedure—Civil, Title 15 Court Procedure—Criminal, Title 16 Court Procedure—Evidence, Title 18-A Probate Code, Title 19-A Domestic Relations, Title 20-A Education, Title 21-A Elections, Title 22 Health and Welfare, Title 23 Highways, Title 24 Insurance, Title 24-A Maine Insurance Code, Title 25 Internal Security and Public Safety, Title 26 Labor and Industry, Title 27 Libraries, History, Culture and Art, Title 28-A Liquors, Title 29-A Motor Vehicles, Title 30-A Municipalities and Counties, Title 32 Professions and Occupations, Title 33 Property, Title 34-A Corrections, Title 34-B Behavioral and Developmental Services, Title 35-A Public Utilities, Title 36 Taxation, Title 37-B Defense, Veterans and Emergency Management, Title 38 Waters and Navigation, and Title 39-A Workers’ Compensation.*

These exemptions range from Attorney General investigative reports to Lobster Promotion Council market studies and promotion plans, from hazardous air pollutant emissions records to Applied Technology Development Center System records. This range of exemptions is not unusual among states across the country. As noted earlier, many exemptions in other states concern trade secrets and proprietary information that are important to companies’ progress and competitors’ advantage.

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42. For a complete list by section number and subject, see *Comm. to Study Compliance with Maine’s Freedom of Access Laws, supra* note 10, app. F, [http://www.maine.gov/legis/opla/foarptapp.pdf](http://www.maine.gov/legis/opla/foarptapp.pdf) (listing all statutes found to grant exemptions from the general rule that all government records are available to the public for review).


44. *Id.* tit 12, § 6455 (Supp. 2006).

45. *Id.* tit. 38, § 585-C(2)(D) (Supp. 2006).

46. *Id.* tit. 5, § 15321(3)(D) (Supp. 2006).

47. For a more detailed list of the kinds of exemptions relevant for business and industry, see Appendix.
A. Case Law

Case law has refined some of the exemptions in Maine. For example, in a case involving Champion International Corporation, its Bucksport paper mill, and the town of Bucksport, the Maine Supreme Judicial Court found that documents supplied to the tax assessor’s office in aid of getting a tax abatement were protected from FOAA inspection because the documents were trade secrets. A lower court, however, held that documents provided by Northern Mattress proving its business losses after a fire in Fairfield did not meet the burden of good cause to support the issuance of a protective order against FOAA inspection. More recently, the Maine Supreme Judicial Court ruled that while the state allows injunctive relief from FOAA disclosure, four criteria must be met. The burden of proving that these four criteria have been met is placed on the party seeking the injunction. The criteria include that the disclosure of the information will cause irreparable injury to the entity requesting the injunction, that the injury outweighs any harm to the information-seeking entity, that “it has a likelihood of success on the merits,” and that “the public interest will not be adversely affected by granting the injunction.”

B. Information and Industry

The statutory exemptions for Maine’s government-held information can generally be grouped into the following categories of industry or business: agriculture and aquaculture, environmental and geological inventory, technology, public utilities, health industries, and finance. The following is a more specific list of the FOAA information exemptions in each of the aforementioned groups.

1. Agriculture: Market research and development fund pre-application reports and grant applications; Department of Agriculture, Food, and Rural Resources reports that are requested by suppliers to remain confidential; Maine Potato Board records when the board votes for confidentiality; minimum standards reports for potato planting; Maine Agriculture Bargaining Board records before final decisions are made; ginseng license application records; and pesticide control reports.

48. Bangor Publ’g Co. v. Town of Bucksport, 682 A.2d 227, 228 (Me. 1996).
51. Id. at 132.
52. Id.
53. See supra note 42.
54. The exemptions related to agriculture are distributed throughout titles 7, 13, and 36 of the Maine Revised Statutes Annotated.
2. *Aquaculture*\(^{55}\): Reports of sales of aquacultured Atlantic salmon; Commission of Marine Resources statistics; Maine Sardine Council tax records, plant pack data, and quality control information; and Aquaculture Monitoring Program information designated confidential by the supplying party.

3. *Environmental and Geological Inventory*\(^{56}\): Archaeological site location information held by state entities; Department of Environmental Protection trade secrets reports and records; and Department of Environmental Protection information designated by the supplier to remain confidential, except where it pertains to emissions data.

4. *Technology*\(^{57}\): Maine Technology Investment Fund proprietary information; Commission on Biotechnology ongoing experiments information; computer programs and technical data provided to a state agency for use in data processing or telecommunications; and Manufactured Housing Board information considered trade secrets.

5. *Public Utilities and Energy Resources*\(^{58}\): Protective orders issues by the Public Utilities Commission; information related to reported violations of public utilities law; customer information, including payment and credit histories; Petroleum Market Share records reported to the Attorney General; and gasoline and heating oil assets acquisition reports reported to the Attorney General prior to sale.

6. *Health Industries*\(^{59}\): Health care records identifying patients or treatment; results of HIV tests; mental examinations of criminal defendants; alcoholism and drug treatment patient records; board of registration, hospital peer review, quality assurance, and professional compliance review records; health maintenance organization (HMO) records that identify patients or treatments; Department of Mental Health and Mental Retardation records identifying patients or treatments; sterilization proceeding records; applications to the Maine Managed Care Insurance Plan Demonstration; abortion and miscarriage reports; reported information of notifiable diseases to Bureau of Health; administration of

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55. The exemptions related to aquaculture are distributed throughout titles 10 and 12 of the *Maine Revised Statutes Annotated*.

56. The exemptions related to environmental and geological inventory are distributed throughout title 38 of the *Maine Revised Statutes Annotated*.

57. The exemptions related to technology are distributed throughout titles 5 and 10 of the *Maine Revised Statutes Annotated*.

58. The exemptions related to public utilities and energy resources are distributed throughout titles 10 and 35-A of the *Maine Revised Statutes Annotated*.

59. The exemptions related to health industries are distributed throughout titles 4, 5, 22, 24, 24-A, 32, and 34-B of the *Maine Revised Statutes Annotated*.
Medicaid Program and licensing or certification; Healthcare Finance Commission records; occupational disease reporting; participants in Marijuana Therapeutic Research program; medical and insurance information in the possession of a retirement system; information or records under the Maine Emergency Medical Services Act; State Board of Nursing records that identify any patients; records of proceedings of hospital medical staff review committees; medical malpractice claim screening panels; and Maine Health Care Finance Commission information designated confidential or privileged.

7. Financial Records: Financial institution account records; Bureau of Financial Institutions records; Consensus Economic Forecasting Commission information that concerns tax reports supplied by the state tax assessor; employment tax increment financing program records; and Small Enterprise Growth Program confidential records.

C. Legislative Review of Exemptions to FOAA

In 2003, the legislature instructed a review committee, starting in 2008 and recurring every two years until 2014, to evaluate the many statutory exemptions found across the Maine Revised Statutes. The committee was charged with reviewing the statutes by title, in groups of five or sixteen titles each legislative session. The committee was also instructed to consider the following elements in determining whether the exception, or information exemption from review, should continue to stand:

A. Whether a record protected by the exception still needs to be collected and maintained;
B. The value to the agency or official or to the public in maintaining a record protected by the exception;
C. Whether federal law requires a record to be confidential;
D. Whether the exception protects an individual’s privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business’s interest substantially outweighs the public interest in the disclosure of records;
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body’s interest

60. The exemptions related to Financial records are distributed throughout titles 5, 9-B, 10, and 36 of the Maine Revised Statutes Annotated.
61. ME. REV. STAT. ANN. tit. 1, § 433(2) (Supp. 2006).
substantially outweighs the public interest in the disclosure of records;
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
H. Whether the exception is as narrowly tailored as possible; and
I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public’s interest in the record protected by the exception.62

VII. CONCLUSION

A review of the statutory exemptions beyond the Maine FOAA clearly indicates that some industries and business groups have successfully lobbied the legislature for certain protections. Those areas of proprietary or trade secrets that are now protected include agriculture and aquaculture, environmental and geological inventory, technology, public utilities, health, and finance industries. Outside of these particular exemptions, however, government-held information is considered public record and is available for public inspection upon request. Maine is not unique in providing special protections for some kinds of commercial interests. As noted earlier, there are many states with similar exclusions from their information access laws.

It is also evident that information which is deemed proprietary or as central to trade secrets by the originator, before it is supplied to a government agency, will be protected from disclosure by that agency.63 Research reports supplied in pre-application or grant application materials will be protected if the applicant requests confidentiality. If the necessity for confidentiality is questioned, then the state court may review a request for protection or injunctive relief within the context of the four criteria supplied by the Maine Supreme Judicial Court in Bangor Historic Track.64

Maine’s legislative committee review will reassess the usefulness and viability of the exemptions within the Maine Revised Statutes. That review will begin in 2008 and will continue every two years until 201265 when all existing exemptions have been evaluated under the presumption that everyone and anyone has access to public records and that all government-held information is considered a public record.

The question that remains for states reconsidering their list of exemptions is whether favoring businesses and providing their special proprietary information

63. See supra note 41 and accompanying text and Appendix.
64. See Bangor Historic Track, Inc., v. Dep’t of Agric., 837 A.2d 129, 132 (Me. 2003) (per curiam); see also supra notes 50–52 and accompanying text.
with exclusionary status benefits the state and citizens as a whole. The answer will rest with not only the guiding principles for establishing access rights, but also with the priorities of the state’s current interests.
## APPENDIX

### INITIAL LIST OF STATES WITH EXEMPTIONS FOR INDUSTRY AND TECHNOLOGY

<table>
<thead>
<tr>
<th>State</th>
<th>Relevant Statute</th>
<th>Case Law</th>
<th>Kind of Industry or Business-Problem</th>
<th>Solution</th>
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<td>State</td>
<td>Relevant Statute</td>
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<tr>
<td>Florida</td>
<td>FLA. STAT. ANN. CH. 90.506 (West 1999).</td>
<td>Salick Health Care, Inc. v. Spunberg, 722 So. 2d 944, 947 (Fla. Dist. Ct. App. 1998) (per curiam).</td>
<td>Health - Contractual information</td>
<td>Case remanded to determine whether documents were privileged as trade secrets</td>
</tr>
<tr>
<td>State</td>
<td>Relevant Statute</td>
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<td>Illinois</td>
<td>5 ILL. COMP STAT. ANN. 120/1.02 (West 2005).</td>
<td>Hopf v. Topcorp, Inc., 628 N.E.2d 311, 312 (Ill. App. Ct. 1993).</td>
<td>Education - Development of a research park by for-profit entities</td>
<td>For-profit entities, while serving a city, are not considered “subsidiary bodies” of the city; disclosure not required</td>
</tr>
<tr>
<td>Indiana</td>
<td>IND. CODE ANN. §§ 5-11-1-9(a), -1-16(e) (LexisNexis 2001 &amp; Supp. 2006).</td>
<td>Ind. State Bd. of Accounts v. Consol. Health Group, Inc., 700 N.E.2d 247, 253 (Ind. Ct. App. 1998).</td>
<td>Health - Hospital records</td>
<td>Records of the part of the hospital legislatively designated as part of the Indiana University were subject to disclosure</td>
</tr>
<tr>
<td>Iowa</td>
<td>IOWA CODE ANN. § 22.2(2) (West 2001).</td>
<td>Gannon v. Bd. of Regents, 692 N.W.2d 31, 44 (Iowa 2005).</td>
<td>Nonprofit organization’s records</td>
<td>Foundation performs a public function and its records are open to disclosure</td>
</tr>
<tr>
<td>State</td>
<td>Relevant Statute</td>
<td>Case Law</td>
<td>Kind of Industry or Business-Problem</td>
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<td>Minnesota</td>
<td>MINN. STAT. ANN. § 13.51 subd. 2 (West 2005); MINN. R. CIV. P. 26.03.</td>
<td>Mall of Am. v. County of Hennepin, Nos. TC-16076; TC-21195; TC-16772; TC-22440; TC-18309; 1995 WL 461069, at *1–2 (Minn. T.C. Aug. 2, 1995).</td>
<td>Taxes - Property assessment records</td>
<td>Protective order granted</td>
</tr>
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<td>State</td>
<td>Relevant Statute</td>
<td>Case Law</td>
<td>Kind of Industry or Business Problem</td>
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<td>Montana</td>
<td>MONT. CONST. art. II, § 9; MONT. ADMIN. R. § 42.2.701 (2006).</td>
<td>Associated Press, Inc. v. Mont. Dep’t of Revenue, 4 P.3d 5, 13 (Mont. 2000).</td>
<td>Taxes - Coal producers’ tax information</td>
<td>Rule 42.2.701 found unconstitutional; judgment for nondisclosure reversed and case remanded</td>
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<td>Oklahoma</td>
<td>OKLA. STAT. ANN. tit. 51, §§ 24A.1–.3 (West 2006).</td>
<td>Farrimond v. State ex rel. Fisher, 8 P.3d 872, 874–75 (Okla. 2000).</td>
<td>Insurance - Insurance commission records</td>
<td>Insurance records are not government records and are not subject to public disclosure</td>
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