



## LEGAL Q&A

**Q** When signing a confidentiality or non-disclosure agreement, should there be any exclusions as to what information is considered confidential?

**A** Yes. While these agreements are important to protect trade secrets, you also do not want to restrict your ability to conduct business. Merely because a party has told you something does not necessarily render it confidential and therefore limit your disclosure. Accordingly, confidentiality agreements should specifically exclude information which: (i) at the time of disclosure to receiving party is publicly available through no act or omission of the receiving party; (ii) is already known by receiving party prior to disclosure; (iii) is obtained by receiving party from a third party who is under no restriction regarding such disclosure; or (iv) is independently developed by receiving party. Finally, the receiving party should be permitted to disclose confidential information which is required by a subpoena or other governmental request provided that they provide the disclosing party with notice and they limit their disclosure to the tribunal or entity requesting such information.



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