

## Trade secrets

Trade secrets are the most common means of refusal of requests for access to data of public interest in the business sphere.

In the interests of ensuring the transparency of managing public funds, trade secrets do not necessarily constitute a barrier to accessibility in this area, but the law provides an opportunity to qualify protected knowledge (such as technological processes, know-how, business strategies, etc.) that is important for management efficiency, as secrets. The justified financial, economic or market interest of economic actors may override the public interest linked to accessing public data, but this must always be decided on a case-by-case basis, followed by careful consideration.

### Legal background

According to VI. (3) of the Fundamental law of Hungary everyone shall have the right to have access to and disseminate information of public interest.

According to Section 26 (1) of the Act CXII of 2011 on the right to informational self-determination and on the freedom of information (hereinafter referred to as FOIA) any person or organ performing state or local government functions, or performing other public duties defined by law (hereinafter jointly “organ performing public duties”), shall allow any person to have free access to data of public interest and data accessible on public interest grounds under its control if so requested, with the exceptions provided by this Act.

Trade secret (as defined by section (1) of the Act LIV of 2018 on the protection of trade secrets) means a fact, information, other data and an assembly of the foregoing, connected to an economic activity, which is secret in the sense that it is not, as a body or as the assembly of its components, generally known or readily accessible to persons dealing with the affected economic activity and therefore it has pecuniary value, and which is subject to steps made with the care that is generally expected under the given circumstances, by the person lawfully in control of the information, to keep it secret.

*Protected knowledge (know-how)* means a technical, economic or organisational knowledge, solution, experience or the assembly of the foregoing, classified as trade secret and recorded in an identifiable manner.

According to Section 27 (3) of the FOIA as data accessible on public interest grounds, the following shall not qualify as business secret: data related to the use of the central budget, the budget of local governments, and European Union funds, to benefits and allowances involving the budget, to the management, possession, use, utilisation and the disposal and encumbering of central and local government assets, and the acquisition of any right in connection with such assets, as well as data, the accessibility or publication of which is prescribed on public interest grounds by a specific Act. Disclosure, however, shall not entail access to data, to know-how in particular, the making available of which would cause disproportionate harm with respect to the performance of business activities, provided that this does not prevent the possibility of access to data accessible on public interest grounds. (3a) A natural person, legal person or organisation having no legal personality that establishes a financial or business relationship with a person belonging to one of the subsystems of the public finances shall, upon request,

provide information to anyone with respect to data that is public on public interest grounds based on paragraph (3) and that is in connection with such a relationship. The obligation to provide information can be fulfilled by disclosing the data accessible on public interest grounds, or by indicating the public source that contains the data disclosed earlier in an electronic form. (3b) If the party obliged to provide information on the basis of paragraph (3a) refuses to provide the information, the party requesting information may initiate the procedure of the organ authorised to exercise legal supervision over the party obliged to provide information.

Resolving the conflict between trade secrets and the freedom of information, Section 27(3) of the FOIA, in case of the use of public funds, qualifies the “quasi” trade secrets as data accessible on public interest grounds. In this case, if the discloser expressly marks the parts concerning the trade secret and explains in detail the reasons for protection of the trade secret, the organ performing public duty, as its contracting party, may not disclose it.

The FOIA states that if the controller is vested with *discretionary authority* by an Act with respect to the refusal of requests for access to data of public interest, the grounds serving for refusal shall be interpreted restrictively, and the request for access to data of public interest shall only be refused if the underlying public interest outweighs the public interest of allowing access to the data of public interest.

According to Section 30 (1) if a document containing data of public interest also contains any other data that the requesting party may not access, the data that must not be accessed shall be made *unrecognisable* on the copy.