

Trade Secret Protection for Life & Health Insurance Filings in SERFF

In Nebraska, SERFF filings are public records unless the company specifically requests a trade secret exemption and the exemption is granted by the Department. If a trade secret information request is made in connection with a new SERFF filing or in response to a DOI objection or request for information in SERFF, two documents must be filed in SERFF to prevent the trade secret from becoming part of the public record when the filing is approved. **Trade secret materials must be separated from public record materials by filing two separate SERFF documents, a “Public SERFF Document” and a “Trade Secret SERFF Document.”** The public and trade secret documents will be linked by cross references, as explained below.

(1) **Public SERFF Document** provides information to the extent it is not a trade secret, then informs the reader that related trade secret information is not included in the public record. This document explains the company’s legal basis for requesting a “proprietary or commercial information” public records exemption under Neb. Rev. Stat. § 84-712.05(3).

A redacted actuarial memorandum could be a Public SERFF Document. In addition to the redacted version of the document, the Public SERFF Document must contain a statement asserting trade secret protection for any redacted information.

An assertion of trade secret protection should be organized as follows:

- Description of Trade Secret Information – describes the type of information without disclosing any trade secret details.
- DOI Request – reference to the DOI objection or request that requires disclosure of the trade secret information, if applicable.
- Associated Documents – cross reference listing the naming conventions of the Public SERFF Document and corresponding Trade Secret SERFF Document.
- Basis for Trade Secret Protection under § 84-712.05(3) – must identify business competitor(s) that may gain a competitive advantage by disclosure of the information and specify the nature of the competitive advantage that would be gained by disclosure.

(2) **Trade Secret SERFF Document** contains protected trade secret information. This document should be limited to trade secret information. If information that should be available to the public is included, the DOI may ask that the public record information be transferred to the corresponding Public SERFF Document.

- The naming convention of a Trade Secret SERFF Document must end with “TradeSecret.pdf or “TradeSecret.xls,” i.e., **[name of document]_TradeSecret.pdf** or **[name of document]_TradeSecret.xls**.
- The first page(s) of a Trade Secret SERFF Document should reproduce the assertion of trade secret protection in the Public SERFF Document, including the description of information, DOI request, naming conventions of associated documents, and legal basis for trade secret protection.
- Each page of the Trade Secret SERFF Document must be marked “trade secret.”

Important Considerations for Filers:

Claims of trade secret protection are subject to DOI approval. If a claim for trade secret protection is rejected, the DOI will contact the filer and provide an opportunity for the filer to amend the response before it is made public.

Trade secret protection must be claimed before or at the time of filing in SERFF, and must state the legal basis for an exception to Nebraska's Public Records Act.

Please be aware that only information filers provide in a Trade Secret SERFF Document is protected from public disclosure – there may be instances when the reviewer will refer to trade secret information in his objection to you. In order for us to keep this objection trade secret, you must copy and paste the entire reviewer's objection into the Trade Secret SERFF Document you file in response to the reviewer's objection. We will suppress the original reviewer's objection at the time the filing is closed.

Trade secret requests cannot be used as an excuse for providing late or incomplete responses to reviewer objections in SERFF.

Legal Basis for Trade Secret Protection in Nebraska:

Pursuant to Neb. Rev. Stat. § 84-712.01(1), all records and documents of or belonging to the State of Nebraska are public records unless a statute expressly protects them from disclosure. Exceptions to the Nebraska Public Records Act include § 84-712.05(3), for trade secrets and "other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose."

The trade secret exception at § 84-712.05(3) is interpreted in AG Opinion 92068, April 27, 1992 ("the mere assertion by an agency that some unknown business competitor may gain some unspecified advantage by disclosure of information does not provide an adequate basis for nondisclosure. Rather a finding that a specified competitor (or competitors) may gain a demonstrated advantage by disclosure is required to invoke the exception under § 84-712.05(3)"), and AG Opinion 97033, June 4, 1997 (emphasizing the need to name specific competitors which might gain an advantage and specify the nature of the advantage which could be gained by disclosure).