EXCEPTIONS TO REQUIRED DISCLOSURE OF PUBLIC RECORDS APPLICABLE TO THE GOLDEN LEAF FOUNDATION

The Golden LEAF Foundation is subject to the North Carolina General Statutes regarding public records. The public records law opens to public inspection most of the records in the Foundation's possession. The public records law provides protections for: (1) certain confidential materials related to economic development projects, and (2) trade secrets.

In the context of economic development projects, N.C. Gen. Stat. 132-6(d) permits the Foundation to withhold public records relating to proposed expansion or location of businesses and projects in North Carolina so long as the release of these materials would "frustrate the purpose for which they were created."

In light of this statutory provision, when an applicant submits records in connection with a project relating to proposed expansion or location of a business in North Carolina, Golden LEAF initially only reveals the name of the applicant, the amount of funds requested, and the project title. All public records relating to the project will be withheld from public inspection while the company is considering its site location, and such public records will not be produced in response to a public records request. These records will be opened to public inspection only after the company or project has publicly announced a final decision with respect to site selection. The Foundation is required to produce these public records as soon as they are no longer protected from disclosure, and no later than 25 days following the date of announcement.

Please be aware that all decisions of the Foundation to award a grant or decline an application are required to be made in meetings open to the public. Therefore, if a grant is made, the fact of the grant and its general purpose are not confidential, although the confidential information described above need not be revealed at that time if the information is still protected by N.C. Gen. Stat. 132-6(d).

Trade secrets are protected from disclosure under N.C. Gen. Stat. 132-1.2 and N.C. Gen. Stat. 66-152 if certain conditions are met. A "trade secret" is business or technical information that derives commercial value from not being generally known or readily ascertainable, and which is the subject of reasonable efforts to maintain its secrecy. If any of the information that has been provided to the Foundation qualifies as a trade secret and has been properly identified as such, that information may be retained as confidential by the Foundation. In the context of economic development projects, the confidentiality of trade secrets can be maintained even after a decision concerning the location of the company or project is made, and the decision announced.

If you provide to us materials that contain trade secrets, you should clearly, prominently, and specifically designate in writing that such information is "CONFIDENTIAL -- TRADE SECRET" at the time it is initially provided to the Foundation. If practical, the trade secret information should be physically segregated from other information. General designations of information as "confidential" or form language automatically inserted into e-mails or into the margins of documents will not be regarded as sufficient designations.

The only information the company or its representatives should designate in writing as "CONFIDENTIAL -- TRADE SECRET" is information that (a) meets the test of a trade secret and (b) will continue to meet that test following the project's announcement. If a company or applicant has specifically designated certain information as "CONFIDENTIAL -- TRADE SECRET" at the time it is initially provided to the Foundation, we will respect that designation, provided that the Foundation determines that (1) the claim of confidentiality is credible and (2) it is not overly broad or indiscriminate.

In the event a challenge is brought contesting the designation of certain information as confidential, the owner of the trade secret should be prepared to defend its designation at its own expense, given that the information necessary to establish trade secrecy is uniquely in its possession.
We hope this memo provides you with useful information concerning the confidential nature of materials and information submitted to the Foundation and we ask that you share it with others who may be working on this project with you. For questions regarding this information, please contact Foundation staff.

We very much look forward to working with you on this project.

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Golden LEAF Foundation
301 N. Winstead Avenue, Rocky Mount, NC 27804
252.442.7474
GoldenLEAF.org
info@GoldenLEAF.org

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