

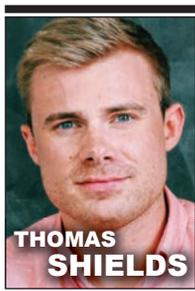
## Legal Matters

# Secrets to guarding your secrets

This is the first in a two-part series about protection of trade secrets.

### Beneath Your Roof

When you go to sleep at night, do you make sure that your garage door is closed and that all the doors are locked? Our guess is that the answer is most likely yes, and the reason is probably that you want to protect yourself, your family and your valuables from intruders. Companies close the proverbial garage and lock the proverbial doors when they implement firewalls and other protections meant to guard their data and the data of their customers from outside intruders such as hackers.



let and keys in a safe that only you have access to, but chances are you trust your kids and do not believe they would engage in such mischief. And, even if they did, the consequences are probably not all that high. The same is not true of the wayward teens roaming the halls and perusing the data of your company. Not actual teens, but rather the opportunistic employees secretly looking to jump ship with your trade secrets. Whether they are going to start their own venture or they are moving to a competitor down the street, the consequences of this type of theft can be catastrophic to your company. Fortunately, like hiding your keys and wallet in your safe, there are steps that companies can take to minimize the chances that their trade secrets are stolen.

### Know Your Own Secrets

Before your company can take measures to protect its trade secrets, it must determine whether it has any trade secrets. On a gut level, a trade secret is any information that you would not want your competitor to know. It is the information that gives your company a competitive advantage. The legal definition of

“trade secret” and the definition adopted in Utah and most other states is “information ... that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” See *Utah Code Ann. 13-24-2(4)*. Information that qualifies as a trade secret includes recipes, customer lists, source codes, formulas, techniques, methods of manufactures, strategic business plans, supplier lists, quality control data, designs, customer purchasing history, drawings, measurements and blue prints.

### The ABCs of Protecting Your Secrets

In all trade secret litigation, the court will have to answer two fundamental questions: First, is the information generally known or readily ascertainable? And, second, did the company take reasonable steps to keep the information secret? The first question explores whether you are trying to protect information that is public knowledge. The court is not going to afford trade secret status and its protections to information that everybody knows or could legitimately know with a little research.

The second question explores whether your company treated the

information as a secret. Did your company take steps to limit access to the information?

Technology cannot completely guarantee that your secrets will not walk out the door with your next employee departure, but it can reduce the odds of that happening and improve the odds that you prevail in a trade secret lawsuit if that does happen. The primary goal in implementing technology to protect your company’s information should be to ensure that only those individuals who need access to information to exploit its economic value have access to that information. For example, the head of marketing at Google does not need to know the search algorithm in order for Google to exploit the algorithms economic value. Another goal of implementing technology to safeguard trade secrets is to easily ascertain who accessed what information at what time and in what manner. Being able to answer these questions with reliable evidence should not only serve as a deterrent to any employee attempting to steal information, but it is also crucial to your company’s success in a trade secret lawsuit.

While it is advisable to have an IT consulting firm review your company’s current protocols and make recommendations, the following are the ABCs of data loss prevention, which includes, among other things, trade secret theft. The ABCs include: Awareness,

Barriers and Confirmation.

### Awareness

At the core of any data security exercise are people — the people who create and manage the data, the people who have a legitimate need to access the data and, unfortunately, those who would seek to access and exploit the data illegitimately. As such, one of the greatest ROIs with respect to data loss prevention can come from a focus on people. Good cybersecurity hygiene starts with a well-defined and well-maintained sense of awareness. The most sophisticated technologies (door and locks) in the world will be of limited effectiveness if they are not used and maintained appropriately. In the data loss prevention space, this idea starts with training on the threat environment that includes a clear organizational vision of not only the risk, but also the impacts of data loss on the organization. People are more likely to internalize the vision when they know how and why it impacts them personally. Human resource organizations and departments can play a big role in establishing, directing and communicating relevant data protection policies and procedures. Many HR organizations are using company intranets, blogs and cross-functional working groups to help deliver the message. Making and keeping your organization aware of threats and the threat environment means they are more likely to care about data security and less likely to fall victim to data theft.

### Barriers

Traditionally, data security was likened to the defense of a medieval castle. Thick walls with guarded gateways did an excellent job of protecting whatever happened to be inside the walls. Today, data is mobile. Cloud applications and a mobile workforce means the castle walls must travel with the data, so the new armor is *identity*. Making sure that the right people have access to the right information for the right reasons for the right period is key. This starts at the beginning of the employment process via tools like Active Directory that create and maintain the foundation of each employee’s corporate identity. It can be extended and enhanced by third party vendors such as Okta, Microsoft, Ping Identity and One Login to name a few that provide Identity as a Service (IDaaS). These companies provide integrations for tools such as Multi-



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Factor Authentication (MFA), Conditional Access Management, Single Sign On (SSO), Mobile Device Management (MDM) and other functionalities designed to prevent, detect and respond to threats.

Two of the most commonly exploited avenues of data loss are via email scams and data exfiltration. These generally occur through phishing (generalized email fraud), spear phishing (targeted email fraud) or the conscious or unconscious exfiltration of information from your secure internal environment to external sources by means of digital media transfers, lost or stolen equipment or network breaches. The good news is that most of you reading this article are using email systems that already have at least some basic levels of fraud protection built into the system. These can be set to monitor certain behaviors, sources or patterns and alert you to the potential theft.

Make sure these safeguards are enabled and configured appropriately for your environment. Closer to home on the data exfiltration side are tools that allow you to control data access right down to individual document levels. Thus, when files or documents are created, there can be specific access rules attached at the document level. Even if a document is lost or stolen, opening the document would require specific user or group-based identity credentials. Tools such as Microsoft's Azure Identity Protection allow users to enable this capability with a few mouse clicks. This becomes a key consideration with respect to barriers, since they tend to restrict movement in both directions.

**Confirmation**

The cybersecurity threat environment is constantly adapting and evolving. As such, your organization's data loss prevention process should be structured to adapt and evolve accordingly. Tools at your disposal include:

- Regular training and threat environment updates.
- Periodic testing for network and personnel vulnerabilities.
- Industry reports such as those published by McAfee Labs 2017 Threats Predictions, and the Verizon Data Breach Investigations Report (DBIR).
- Internal or third-party security operations centers that monitor network activity and report or act on anomalous behaviors.

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he advises clients on a variety of intellectual property and regulatory matters.

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the debt ceiling. Even in deregulation, an area of broad presidential authority, little of substance has been accomplished. Many of Trump's executive actions have been to "review" various measures. An environmental activist told me he has cheered up his staff by pointing out that the Trump administration's words have rarely been followed by successful deeds.

Donald Trump could have quickly begun reshaping American politics. He heard voices that others didn't, understood what those people wanted to hear and articulated much of it.

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*Part 2 of this two-part series will run next week in The Enterprise.*

But when it came time to deliver, it turned out that he had no serious ideas, policies, nor even the desire to search for them. He just wanted to be president, meeting world leaders, flying on Air Force One and pardoning the Thanksgiving turkey, while delegating the actual public policy to House Speaker Paul Ryan or Vice President Mike Pence — or whomever. So far, Donald Trump has turned out to be something far less revolutionary than expected — a standard-issue, big business Republican, albeit an incompetent one, wrapped in populist clothing.

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**CALENDAR***from previous page*

nonmembers. Details are at [slchamber.com](http://slchamber.com).

**Oct. 11-12**

**Utah Sustainability Summit**, presented by P3 Utah, the U.S. Green Building Council and Intermountain Healthcare. Theme is "Wellness: Connecting Human and Environmental Health." Location is Falls Event Center at Trolley Square, 580 S. 600 E., Salt Lake City. Details are at <https://utsustainability-summit.com/>.

**Oct. 13, 7:45-9 a.m.**

**Women in Business (WIB) Networking**, an Ogden-Weber Chamber of Commerce event. Location is the chamber, 2380 Washington Blvd., Suite 290, Ogden. Free for WIB members. Details are at [ogdenweberchamber.com](http://ogdenweberchamber.com).

**Oct. 17, 7:30 a.m.-2 p.m.**

**Utah Global Forum**, presented by Gov. Gary Herbert, with the theme "Prosperity Through Diversity" and focusing on moving Utah businesses to the global business stage and meeting the challenges of today's business environment. Forum also focuses on foreign direct investment in Utah. Keynote speaker is Javier Palomarez, chief executive officer of the U.S.

Hispanic Chamber of Commerce. Location is the Grand America Hotel, 555 S. Main St., Salt Lake City. Cost is \$75. Details are at [utahglobalforum.com](http://utahglobalforum.com).

**Oct. 17, 11:30 a.m.-1 p.m.**

**Business Alliance Networking Luncheon**, a Davis Chamber of Commerce event. Location is Boondocks Fun Center, 525 Deseret Drive, Kaysville. Free. Details are at [davischamberofcommerce.com](http://davischamberofcommerce.com).

**Oct. 18, 3-5 p.m.**

**"Jump Start: Intro to Entrepreneurship,"** a Salt Lake Chamber seminar taught by Deb Bilbao, business consultant at the Women's Business Center (WBC). Event is designed for all entrepreneurs: those looking to go into business, early start-up stage or those looking to improve an existing business. Location is the Salt Lake Chamber, 175 E. 400 S., Suite 600, Salt Lake City. Free. Details are at [slchamber.com](http://slchamber.com).

**Oct. 19**

**Titan Awards Ceremony**, a Sandy Area Chamber of Commerce event. Honorees are Kem C. Gardner, chairman of the Gardner Co.; Jeanette Herbert, Utah's first lady; and Ronald W. Jibson, former chairman, president and chief executive officer of Questar Corp. (now Dominion Energy).

**CAREERS****TECHNICAL**

**Oracle America, Inc.** has openings for **Technical Analyst** positions in Lehi, UT. Job duties include: Deliver solutions to the Oracle customer base while serving as an advocate for customer needs. Offer strategic technical support to assure the highest level of customer satisfaction. Apply by e-mailing resume to [paul.merideth@oracle.com](mailto:paul.merideth@oracle.com), referencing 385.20040. Oracle supports workforce diversity.

**TECHNICAL**

**Oracle America, Inc.** has openings for **Technical Analyst-Support** positions in Lehi, Utah. Job duties include: Deliver solutions to the Oracle customer base while serving as an advocate for customer needs. Offer strategic technical support to assure the highest level of customer satisfaction. Apply by e-mailing resume to [abhishek.purkayastha@oracle.com](mailto:abhishek.purkayastha@oracle.com), referencing 385.20039. Oracle supports workforce diversity.

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**Oracle America, Inc.** has openings for **Technical Analyst-Support** positions in Lehi, Utah. Job duties include: deliver solutions to the Oracle customer base while serving as an advocate for customer needs; offer strategic technical support to assure the highest level of customer satisfaction. Apply by e-mailing resume to [ponch.thompson@oracle.com](mailto:ponch.thompson@oracle.com), referencing 385.19799. Oracle supports workforce diversity.

Location is Little America Hotel, 500 S. Main St., Salt Lake City. Details are at [sandychamber.com](http://sandychamber.com).

**Oct. 19, 7:30-9 a.m.**

**Monthly Coffee Social and Networking**, a Holladay Chamber of Commerce event. Location is 3 Cups Coffee, 4670 S. Holladay Village Plaza, No. 104, Holladay. Free. Details are at [holladaychamberofcommerce.org](http://holladaychamberofcommerce.org).

**Oct. 24, 11:30 a.m.-1 p.m.**

**Women in Business Luncheon**, an Ogden-Weber Chamber of Commerce event. Location is Hub 801 Events, 3525 Riverdale Road, Ogden. Cost is \$20. Details are at [ogdenweberchamber.com](http://ogdenweberchamber.com).

**Oct. 24, noon-1:30 p.m.**

**"Lunch and Learn Series: Search Engine Optimization."** The Lunch and Learn Series is a collaboration between the Women's Business Center and the Professional Education Department at the University of Utah. Location is the Salt Lake

Chamber, 175 E. 400 S., Suite 600, Salt Lake City. Cost is \$40. Details are at [slchamber.com](http://slchamber.com).

**Oct. 26, 5-7 p.m.**

**Business After Hours**, a Salt Lake Chamber event. Location is Hotel RL, 161 W. 600 S., Salt Lake City. Cost is \$7 for early-bird members, \$10 for members, \$15 for nonmembers. Details are at [slchamber.com](http://slchamber.com).

**Oct. 29-Nov. 1**

**11th Annual Algae Biomass Summit**, an Algae Biomass Organization event featuring discussions about the impact that the latest advances in algae commercialization and research are having on agriculture, food and nutrition markets, carbon and water management, advanced materials, energy and more. Event includes plenary sessions with keynotes and panel discussions, plus breakout sessions and a poster display. Location is Grand America Hotel, 555 S. Main St., Salt Lake City. Details are at [algaebiomasssummit.org](http://algaebiomasssummit.org).