



# Code of Ethics

**A Legal and Ethical Competitive Intelligence Guide for Clients**

## OVERVIEW

Fuld + Company has prepared this mock-up of a set of legal and ethical guidelines. This document is not meant to offer legal advice, nor is it meant to be reflective of the prevailing laws and customs within your particular industry. It is meant for instructional purposes only. We strongly recommend the close involvement of corporate legal personnel in the development and promulgation of your own company's intelligence legal and ethical guidelines.

These guidelines are not meant to cover every conceivable circumstance you or your employees may encounter. It is important for competitive intelligence managers, working with legal counsel, to craft a set of guidelines pertinent to your own company's and industry's legal and ethics policies.

When crafting legal and ethical guidelines, there are a few important factors to consider. The first is prevailing law. Generally, two types of statutes apply:

- The Economic Espionage Act of 1996
- Antitrust laws

Your company's legal department can provide guidance on how such laws apply to your company's intelligence activities.

The second factor is ethics. Here, there are no prevailing laws to govern ethical behavior. Ethics is a matter of company, and personal, comfort. You should refer to your company's broader set of ethics rules, and apply your own values in determining what is ethical.

# LEGAL AND ETHICAL GUIDELINES

## Establishment of the Business Intelligence Program

Company is establishing a competitive intelligence function that will be staffed by full-time intelligence professionals and that is dedicated to delivering actionable intelligence and timely reporting on external developments that will enhance our decision-making and competitiveness. The intelligence produced by this effort will serve several important purposes, including:

- Monitoring and assessing competitor activities, and supporting related competitive actions;
- Analyzing and strategically positioning Company in the marketplace;
- Providing “early warning” intelligence on critical issues to management;
- Providing intelligence inputs to the Company’s strategic and business planning processes; and
- Supporting a culture that operates within the letter and the spirit of the antitrust and trade secret laws.

As Company employees, we all will share an important responsibility to participate in the intelligence system by being the Company’s “eyes and ears” in gathering and sharing information. Gathering and using publicly available competitive and market information is part of what fair competition is all about. It is also each of our responsibility to carefully consider any information about Company that we share with others.

## The Need for Legal and Ethical Guidelines

You and the business partners you work with must conduct intelligence activities in accordance with the highest legal and ethical standards. The reputations of the Company and its employees for unquestioned honesty, integrity, and fair dealing must not be compromised. Violations of the law, even if inadvertent, can result in substantial financial penalties, lost business opportunities and even jail sentences.

The guidelines presented here are intended to serve as a basis for how anyone involved in competitive intelligence activities and the gathering of intelligence information should conduct themselves. Please keep these guidelines where you know you can find them, and refer to them frequently. Also recognize that guidelines are simply that – guidelines. It is impossible to specify conduct for every situation that may arise; often you will have to use your best judgment – particularly the decision to seek guidance about your specific situation from professional support within the Company. **REFER YOUR QUESTIONS REGARDING LEGAL AND ETHICAL INTELLIGENCE PRACTICES TO THE COMPETITIVE INTELLIGENCE UNIT OR THE COMPANY LEGAL DEPARTMENT.**

## Acceptable Intelligence Sources and Activities

Most of the factual information required for successful intelligence analysis can be found in the “public domain.” A key role you can perform is to assist in gathering this publicly available information; sources that you may find useful include (but are not limited to):

- Published materials – e.g. local newspapers and press accounts
- Public filings – zoning, building permits, litigation, etc.
- Financial documents, such as competitor company annual reports
- Published financial information and broker reports
- Brochures, reports, other information published by or about competitors that can be collected at trade shows, exhibits, etc.
- Published market surveys and consultant reports

Business contacts you have may also be valuable sources; these include:

- Customers
- Distributors of competitive products
- Advertising agencies
- Market research firms
- Securities analysts
- Peers at professional meetings
- Purchasing agents
- Casual or social acquaintances
- Journalists
- Suppliers
- Trade associations

You may also encounter situations where competitive information can be obtained more directly; for example, interviewing a new employee that recently worked for a competitor, or arranging a meeting directly with a customer. We urge you to exercise extreme caution in talking directly to competitors. In addition, remember it is never acceptable to talk to competitors about pricing or price-related topics. Contact the company’s legal department if you have any questions about allowable topics of conversation with competitors or other company outsiders.

When gathering information, always document the situation under which it was acquired. Specifically:

- The source (by type if unable to divulge name)
- Circumstances under which the information was obtained
- Date information was obtained
- Why information was provided
- Level of confidence in source and/or in information

When speaking with potential sources, it is important to respect any prevailing nondisclosure agreements they may have with current or former employees or other parties. Such NDAs may include:

- A confidentiality agreement a new employee has with his/her former employer
- A nondisclosure agreement between a customer and a competitor
- Nondisclosure agreements between a consultant and a competitor or other industry participant

## Unacceptable Intelligence Sources and Practices

To maintain the appropriate standards of conduct, there are three general categories of behavior that must be avoided: Illegal activities, Misrepresentation, and Manipulation.

Illegal activities should not be pursued under any circumstances. Examples of such actions include (but are not limited to):

- Theft (tangible or intangible property)
- Blackmail
- Wiretapping
- Clandestine recording
- Misappropriation of intellectual property
- Price fixing
- Illegal boycotts
- Bribery
- Trespassing
- Receiving stolen property
- Eavesdropping
- Extortion
- Market allocations of products or territories
- Bid rigging

Under the Economic Espionage Act of 1996, it is also prohibited for any person to convert a trade secret to his own benefit or the benefit of others knowing it will injure the owner. Under the act, a trade secret is broadly defined to include financial, business, scientific, technical, economic or engineering information that the owner has taken reasonable measures to keep secret. Prohibited and punishable activities under the Act include theft, appropriation without authorization, duplication, sketches, drawings, photographs, downloads, uploads, alterations, etc.

Misrepresentation covers a range of behavior that involves deception about your identity with the goal of masking your intentions. Some examples include:

- Lying about who you are, what your job function is, and/or whom you work for when asked directly.
- Claiming to be someone you aren't – e.g. a college student doing research project – when asking for information. If you are both a Company employee and a college student, it is misrepresentation to request information of a competitor under the guise of being a college student, if you intend to use that information in your profession.
- Posing as a job seeker to respond to a competitor's want ads.
- Posing as an agent looking for a site in a town where a competitor is rumored to be exploring a similar site.
- Offering a nonexistent job position to attract applicants from a competitor.
- Posing as a potential customer, supplier or business partner to gain information about a competitor that is not publicly available.

Manipulation covers behavior and efforts to influence/coerce a competitor or other source of information (such as a supplier or vendor) to provide information they might not otherwise. Examples include:

- Providing drinks to a potential "target" – and then asking tough questions.
- While interviewing a job applicant, suggesting that their chances of being hired are improved by providing information on a competitor.
- Falsely announcing new products, expansion plans, and/or changes in strategy to test competitors' reactions.
- Offering "gratuities" to a source in exchange for information.
- In discussions with suppliers or vendors, making supply agreements contingent on providing intelligence about competitors (whether the vendor does business with the competitor or not).

**Any question about whether information concerning a competitor may be properly acquired or used should be promptly referred to the company's competitive intelligence department OR the Company Legal Department.**

## Some Typical Situations

The following situations and guidelines are intended to cover some of the more common opportunities you may encounter in your efforts to gather information. The guidelines are intended to give you more specifics on behaviors to encourage and/or avoid; again, however, we cannot anticipate everything you may encounter in these situations, and often you will have to apply your best judgment based on these guidelines.

### Use of Consultants

- Do make sure that your consultants act in accordance with your own legal and ethical standards – include Company's guidelines and a specific clause in any agreement with them.
- Do not request a consultant to deliver proprietary or confidential information or documents
- Do not ask a consultant to do anything that you would not do, or that would violate our company's code of ethics.

### Trade Shows or Conferences

- Do collect all information that is displayed publicly in a booth or display.
- Do note conversation heard casually about a competitor – including the source if possible (to complement the veracity of the report).
- Do engage in conversation to obtain information.
- Do not misrepresent yourself – if asked, be willing to identify your employer and the area you work in.
- Do not share information about Company that is not generally available to the public – **ASK FOR ADVICE IF YOU ARE UNSURE WHAT IS OR ISN'T PUBLICLY DISCLOSED.**

### New Hires from Competitors

Do discuss with employees information that they are willing to share about their prior employer, with the following exceptions.

- Do not discuss anything that the previous employer would consider confidential.
- Do not pressure employees to disclose information about their prior employer that they indicate is confidential or proprietary in nature.
- Do not discuss pricing or price-related matters about the prior employer.
- Do not discuss with employees information that you know would be subject to a confidentiality binder with the prior employer.
- Do not accept, request or otherwise obtain copies of documents acquired in confidence, or clearly designated as confidential, from the prior employer.

### Interviewing Competitors for Job Positions

- Do ask them about information they may have about a third party – so long as it is understood that you are not interested in information that either of you know is of a proprietary or confidential nature to that third party.
- Do ask them what they know about Company, how it was acquired, and how it was viewed by their employer.
- Do not discuss pricing or price-related matters about the competitor.
- Do not make the possibility of employment contingent on them providing competitor information.
- Do not ask questions about present or past employers. If he or she does not get the job, they might claim it is because they refused to answer improper questions.



## Direct Interviewing with Competitors

- Do have your questions reviewed with Legal before engaging in the interview.
- Do notify the Competitive Intelligence unit if you are planning such a meeting.
- Do not ever ask about pricing or price-related issues.

## Encountering Confidential Information

If you find competitive information that is clearly marked confidential (written reports, computer discs, other data storage media, etc.):

- Do pass the information on to Company Legal representatives.
- Do note what the circumstances were of your discovery.
- Do not copy, or retain a copy, of the material. **YOU CAN NOT USE CONFIDENTIAL INFORMATION.**

## Dealings with Suppliers, Vendors and Agents

- Do ask them to discuss actions of competitors that they do not serve as customers, provided they do not discuss anything that is deemed to be privileged or confidential.
- Do ask them to discuss actions of competitors they serve as customers, providing that they do not discuss anything that is deemed to be privileged or confidential.
- Do not pressure a supplier into providing information they are otherwise uncomfortable or not obligated to provide.
- Do not manipulate a supplier into providing information as a condition of doing business.

Agreements with competitors concerning prices or any terms of sale are absolutely prohibited. Since even discussions of prices or price-related information with competitors can be considered as evidence of illegal price fixing, you must not write or talk to competitors about prices, pricing methods, special financing or other matters relating to or effecting price or an element of price. In addition, any contact with a competitor must be approved in advance by the Company Legal Department.

## Always Use Common Sense

In gathering business intelligence, you must expect to encounter the unexpected. When this happens – when a situation occurs that there is no clear guideline for governing behavior – you may find one of the following “common sense” guidelines helps you to determine the appropriate steps to take:

- Is there evidence that someone has taken steps to keep the information confidential (labeling, limited distribution)?
- Does Company keep this information confidential?
- Does the individual want something (money, job, product discount, company-confidential information) in exchange for the information he or she has?
- Are you causing your employees, or a competitor’s employee, or an information source, to act contrary to his or her set of personal ethical beliefs? If you think the answer is yes, then refrain from these actions.
- Are you condoning your behavior because “everybody else does it”? If yes, then don’t.
- Are you doing anything that will jeopardize your business relationship with this individual?
- What would you tell your kids if they asked what you did today?
- How would it look if this activity appeared on the front page of the Wall Street Journal? Your local newspaper?

Of all the “common sense” guides, perhaps these are the simplest:

- If you know it’s wrong, DON’T DO IT.
- If you’re not sure if it’s wrong – ASK FOR ADVICE. And keep asking until you get the answer.

**REMEMBER – PLEASE REFER ALL QUESTIONS REGARDING LEGAL AND ETHICAL INTELLIGENCE PRACTICES TO THE BUSINESS INTELLIGENCE UNIT OR THE COMPANY LEGAL DEPARTMENT.**



## Related Fuld + Company Sources

For other articles and white papers published by Fuld + Company on the subject of competitive intelligence ethical and legal guidelines, we recommend you read or view:

*Finance and Tech Signal Bold Attitudes on Ethics*, WSJ.com – March 7, 2011

*Over the Line – A Report on the Boundaries of Gathering Competitor Information*, 2010 Fuld White paper

*How Competitive Intelligence Rules Encourage Cheating*, Harvard Business Review, December 20, 2010

*Raconteur on Business Ethics*, Raconteur Media, May 18, 2010

*The Secret Language of Competitive Intelligence*, Leonard M. Fuld, (Crown Business, NY, 2006)

*The New Competitor Intelligence*, Leonard M. Fuld, (John Wiley & Sons, NY 1994)

*Statement of Ethics*, Fuld + Company's guidelines for its employees and clients

*What Is Competitive Intelligence?* Fuld + Company website

## For more information, contact:

**NORTH AMERICA** Global Headquarters  
131 Oliver Street, Suite 301 | Boston, MA 02110 | USA | ☎ +1 617 492 5900

**EUROPE** London: 20 Conduit Street | London W1S 2XW | UNITED KINGDOM | ☎ +44 (0) 7659 6999

**ASIA-PACIFIC** Manila: 3402 One Corporate Centre | Julia Vargas cor. Meralco Ave. | Ortigas Center, Pasig City | PHILIPPINES | ☎ +63 (0) 706 3292  
Singapore: 20 Cecil Street | #14-01 Equity Plaza | SINGAPORE 049705 | ☎ +65 6303 2431