Confidentiality in Economic Development: Navigating NDAs, Ohio HB 184, and Evolving Transparency Requirements

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Economic development professionals continue to balance confidentiality demands from companies with their own statutory transparency obligations. Carefully structured non-disclosure agreements (NDAs), paired with clear internal protocols, can protect sensitive project information while honoring open-records requirements. Recent legislative activity underscores the trend toward more prescriptive confidentiality rules. In Ohio, House Bill 184 (HB 184) expands R.C. 9.66 to create a clearer pathway for statutory confidentiality of certain economic development materials during defined phases, with practical implications for how public entities negotiate, label, store, and disclose records.

Role of NDAs

An NDA is a legally binding contract that requires one or more parties to keep specified information confidential and use it only for defined purposes. In economic development transactions, NDAs often govern the exchange of proprietary business plans and financial projections, site selection criteria and infrastructure requirements, and technical specifications and operational details. These agreements serve a critical purpose: they allow private companies to share sensitive information with the counterparty that is necessary for evaluating incentives, locations, and partnerships without risking competitive harm, while giving public entities a structured framework to manage receipt, handling, and disclosure in alignment with applicable public records laws.

NDAs remain the primary tool to align expectations, narrow the scope of confidential information, and set timelines for disclosure. For public entities, NDAs should align with applicable open-records laws by clearly identifying what information may and may not be

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disclosed and the timing of such disclosures. Effective NDAs define confidential categories narrowly, establish project-phase triggers for disclosure, and include mechanisms for notice and objection. They also articulate operational commitments, such as access restrictions, secure data rooms, and record-retention coordination, to ensure promises made on paper are performed in practice.

Business Drivers for Confidentiality Requests

Companies seek confidentiality because poorly timed disclosure can distort markets, strain operations, and jeopardize strategic objectives. Competitive site selection processes depend on discretion; early identification of a prospective location can attract competing bidders, trigger land speculation, or otherwise undermine a company's ability to secure real property and supporting infrastructure on viable terms. Public companies must also manage securities law obligations, including Regulation FD and the handling of material nonpublic information; premature leaks can disrupt planned investor communications, create selective disclosure risks, and complicate board approvals or financing arrangements.

Strategic and operational sensitivities are likewise acute: disclosure of growth strategies, geographic positioning, or potential mergers, acquisitions, and partnerships can invite competitive countermeasures; workforce planning and facility consolidation discussions can unsettle employees, spur attrition, and complicate labor relations. Market and transaction stability can also suffer if vendors and suppliers reprice or adjust terms in anticipation of awards, if speculation inflates acquisition costs, or if counterparties alter behavior based on incomplete signals. Time-limited, carefully scoped confidentiality allows companies to test-fit sites and incentives, validate infrastructure and utility requirements, and coordinate governance and financing without creating external pressures that could distort the business case, while still providing for transparency once milestones are reached.

Core Tension

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Public agencies must respond to legitimate transparency interests while stewarding competitive projects that depend on discretion. Broad, open-ended confidentiality promises can be unenforceable or impractical for public bodies, yet insufficient protection can chill investment. The solution is not secrecy by default or disclosure by default; it is calibrated confidentiality keyed to statutory allowances, time-limited to milestones, and supported by disciplined workflows.

National Trends

Across jurisdictions, legislatures are refining what economic development information may be withheld, with greater emphasis on process discipline. Common themes include: (a) defining protected categories tied to competition-sensitive negotiations; (b) time-boxing confidentiality to pre-award or pre-announcement phases; (c) conditioning nondisclosure on documented need and ongoing negotiations; and (d) encouraging proactive public summaries once key milestones occur. This trend rewards agencies that integrate legal review early, standardize labeling for protected materials, and adopt milestone tracking to trigger timely reassessment of confidentiality.

Ohio Focus: HB 184 and the Expansion of R.C. 9.66

Ohio's HB 184 reflects a shift toward statutory confidentiality for certain economic development records and materials. At a high level, the expanded R.C. 9.66 identifies categories of information associated with active economic development projects that may be treated as confidential during defined phases of negotiation and evaluation. By anchoring confidentiality in statute rather than solely in contract, the law reduces discretion that agencies previously exercised on existing statutory requirement, which now creates some statutory conflict, and on a case-by-case basis, while placing greater weight on compliance with the statutory framework.

Under HB 184, covered information may be required to remain confidential while a project is being actively pursued, negotiated, or evaluated, and until specified milestones occur. This phase-based approach clarifies timing: some materials may be withheld during

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active negotiations but may become subject to disclosure once a deal is finalized, announced, or otherwise reaches statutory endpoints. The practical effect is to move agencies away from ad-hoc determinations and toward standardized protocols.

Public officials and staff should implement tighter protocols and route potentially covered communications and materials through legal review before external sharing or public release. Because the statute more clearly prescribes confidentiality for defined categories and phases, inadvertent disclosure can create risk, including potential administrative or contractual consequences. While the law does not convert every breach into a criminal matter, unauthorized disclosure can still carry liability exposure and reputational harm; agencies should treat statutory categories and timelines as compliance obligations, not preferences.

Practical Considerations

Agencies and their partners should translate legal requirements into daily practice:

- **Training:** Engage in specific training of elected and non-elected officials and staff.
- **Intake and triage:** Identify at the outset whether a proposal or inquiry implicates protected economic development categories and mark the file accordingly and make sure it is not released as public records. Use a standard intake checklist keyed to statutory definitions and project phase.
- **Phase mapping:** Maintain a simple phase chart for each project (e.g., inquiry, evaluation, negotiation, approval, announcement, post-award) and tie confidentiality status to each phase. Update promptly when milestones are reached.
- **Narrow tailoring:** Limit confidential treatment to the smallest necessary set of documents and data fields. Over-designation undermines credibility and can complicate records responses.
- **Parallel communications:** Prepare non-confidential summaries when feasible to facilitate stakeholder

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engagement without jeopardizing sensitive terms.

- **Official action:** When undertaking official action that statutorily requires the release or disclosure of information that could be considered confidential, limit such disclosure to only that information which is itself statutorily mandated or required.
- **Sunset discipline:** Record anticipated sunset or milestone dates for each confidential designation and trigger periodic reviews to release or reclassify materials as phases change.

Ohio-Specific Drafting and Operations Guidance

For public entities in Oho and their private partners working under HB 184 and expanded R.C. 9.66:

- **Discussion and communication:** For public bodies, utilize options, such as executive session, to conduct meetings and deliberations that incorporate or rely on information or records likely covered by the law.
- **Align NDA definitions:** Track statutory categories in the definition of "Confidential Information," using cross-references to the covered economic development materials and phases. Clarify that statutory confidentiality controls in case of conflict and that disclosures mandated by law are permitted.
- **Phase-based clauses:** Incorporate language tying confidentiality to defined project phases and statutory milestones, with automatic reassessment upon phase change. Include procedures for documenting when a project transitions to public announcement or award.
- **Labeling and flags:** Require consistent labeling, such as "R.C. 9.66—Economic Development Materials—Phase [X]," on documents and in subject lines. Use standardized metadata tags in document management systems to support records searches and retention.
- **Records-request workflow:** Establish a dedicated public-records intake path for economic development materials that

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triggers legal review under R.C. 9.66 before any release. Build in notice to counterparties where permitted and maintain response templates reflecting statutory categories.

- **Access controls:** Limit access to covered materials to a named team, use role-based permissions, and segregate negotiation drafts and incentive models in restricted repositories. Avoid use of personal devices or unsanctioned channels for project communications.
- **Training and playbooks:** Provide periodic training for staff on HB 184 and R.C. 9.66, including practical examples, labeling, and escalation points. Publish a short playbook for project managers outlining dos and don'ts during active phases.
- **Sunset and milestone tracking:** Use a central tracker to record key dates (e.g., negotiation start, board action, announcement) and anticipated confidentiality sunsets. Calendar reminders to reassess designations and prepare public-facing materials at milestone events.
- **Counterparty expectations:** Include rider language for private companies explaining Ohio's statutory framework, clarifying that certain information may be confidential only during defined phases, and encouraging submission of segregated, well-labeled materials to facilitate compliance.
- **Incident response:** Define a brief protocol for suspected unauthorized disclosure, including internal notification, containment steps, and counterparty communication. Document corrective measures to reduce repeat risk.

Key Takeaways

Statutory confidentiality regimes are maturing, and Ohio's HB 184 expands R.C. 9.66 to more clearly protect certain economic development materials during defined project phases. NDAs should be harmonized with these rules, not used to circumvent them. Success depends on disciplined operations: accurate scoping, clear labels, phase-aware controls, and timely reassessment at milestones. Agencies that operationalize these elements reduce risk, protect negotiations, and maintain public trust.

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Confidentiality in economic development is no longer managed by contract terms alone. With laws like Ohio's HB 184 refining when and how materials may be withheld, public entities should modernize their NDAs and internal controls to reflect statutory phases and categories. A calibrated approach — one that is narrow, time-bound, and procedurally sound — best supports competitive projects and transparent governance.

For questions about NDAs and evolving transparency requirements in your jurisdiction, please contact the author or any attorney in FBT Gibbons' Public Finance practice group.

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