

United Technologies Corporation

Code of Ethics

# Gathering Competitive Information

The UTC Code of Ethics recognizes that gathering and using information related to competitors is an accepted and routine business practice. The Code provides, however, that information will be sought only when there is a reasonable belief that both receipt and use of the information is lawful.

## What exactly is “competitive information”?

“Competitive information” includes anything related to the competitive environment or to a competitor — for example, information related to products, markets, pricing, or business plans. This information could be drawn from published sources or could otherwise be widely available to the public. Some of this information will be oriented to a specific competitor (“competitor information”), and some competitor information would be considered “proprietary,” “business confidential,” or “trade secret,” (this circular will use the label “proprietary”) which a business would attempt to hold closely. There is no single, definitive standard used by businesses for determining what is proprietary; definitions vary by industry and indeed from enterprise to enterprise; some businesses are indiscriminate and go so far as to claim that all business information is proprietary.

## What competitive information may I obtain?

UTC will respect the reasonable expectations of a business for protecting its proprietary information. Because there is no single, definitive standard for determining what is proprietary and because a business must take reasonable steps to protect its proprietary information, UTC will evaluate the receipt of information within the context of the process of information gathering rather than with reference to some fixed definition of “proprietary.” In other words, how the information is gathered will indicate, ordinarily, whether it is proper to receive and use. From one extreme, information gathered from published sources clearly is permitted. At the other extreme, a “Watergate” style break-in is never permitted. While in the process of gathering information, follow two principles —

1. Do not induce a person to betray a trust by offering or giving a gift or by offering or alluding to some prospective employment or business opportunity.
2. Do not intrude on reasonable expectations of privacy or confidentiality.

In seeking examples beyond the flat prohibitions against bribes and theft, it is not possible to prepare any definitive catalog or listing of improper techniques. The nature and practices of a particular market will shape some of the standards. For example, a competitor will understand that his price will be revealed by a prospective customer who uses auction techniques in conducting competitions. Aside from the practices of any given market, businesses are expected to take steps to protect information which is considered valuable. A business which does not take steps to protect its information cannot reasonably expect others to treat it as proprietary. A competitor should not have a reasonable expectation of privacy when conversing in a public place. A business can expect, on the other hand, that its computer system will not be manipulated or monitored by a “hacker.”

It is imperative to use good judgement and common sense. In analyzing a possible course of conduct, ask yourself, “Why is this information available to me?”

1. Have I done anything which coerced somebody to share information? Have I, for example, threatened a supplier by indicating that future business opportunities will be influenced by receipt of information with respect to a competitor? Have I encouraged an employee to divulge information belonging to a prior employer when such a disclosure would conflict with an employment agreement?
2. Am I in a place where I shouldn't be? If, for example, I am a field representative with privileges to move within a customer's facility, have I gone outside the areas permitted? Have I misled anybody in order to gain access?
3. Is the contemplated technique for gathering information invasive, such as sifting through trash or setting up an electronic “snooping” device directed at a competitor's facility from across the street?

4. Have I misled somebody in a way that the person believed sharing information with me was required or would be protected by a confidentiality agreement? Have I, for example, called and misrepresented myself as a government official who was seeking information for some official purpose? Have I misrepresented myself as a supplier (covered by a proprietary rights agreement or other confidentiality agreement) and created an impression that the information would be protected?
5. Have I done something to evade or circumvent a system intended to secure or protect information?

These illustrations, expressed in the form of questions, involve intrusive acts; such conduct must not occur.

UTC's standard of a “reasonable belief” that receipt and use is lawful does not turn solely on the personal belief of the recipient. Again, ask yourself, “Would an objective third party conclude that it is reasonable for me to believe receipt and use of information was lawful?” Whether the information has any utility or value to UTC (indeed, whether or not the information is used) is immaterial in determining whether receipt was proper.

A proprietary stamp, mark, or legend is a notice —

which could indicate that the information is valuable and should be protected; or

which could mean nothing because, for example, the marking was applied indiscriminately to public information or because the information was stale and no longer valuable.

Proprietary markings are very significant in doing business with the U.S. Government because there are strict rules governing the receipt of information and criminal penalties for violations. Don't accept any portion of a competitor's bid or proposal, and don't accept any document with the legend "Source Selection Information — See FAR 3.104." (Refer also to the section below addressing competitive information in our business relationships with the U.S. Government.)

In circumstances not falling under the strict rules of the government procurement process, the significance of a proprietary marking is less clear. The presence (or absence) of markings does not conclusively answer the question of whether information is in fact proprietary; however, a proprietary marking is a form of notice — the information may be valuable and subject to protection.

If information is marked and if, under common business practice, the information ordinarily would be held closely, we should assess the propriety of our receipt. Remember, even if the information is proprietary, the person sharing it may have authority to do so. Follow the principles enunciated in this circular, concentrating on the process of information gathering — don't induce a breach of trust and don't intrude on reasonable expectations of confidentiality and privacy. Beyond applying the principles, consider the person from whom you might receive information and satisfy yourself that he or she did not come into possession of the information by unlawful means. If the information has a proprietary marking, documentation should be prepared to record the circumstances of receipt.

The guidelines apply in all respects. UTC will not use a consultant in a manner inconsistent with the Code of Ethics. For additional information, refer to UTC's policies and procedures for the "Engagement of Consultants."

Giving business gifts is commonplace. What are the guidelines for distinguishing an appropriate gift from one which would induce a person “to betray a trust”?

UTC policy generally permits giving business gifts which are reasonable — they must be reasonable in value, reasonable in frequency of occurrence, and reasonable under the totality of the circumstances. For additional information, refer to the circular: “The Giving and Receiving of Business Gifts.”

What are the rules regarding competitive information in our business relationships with the U.S. Government?

Relationships (and conducting business) with both the Executive and Legislative Branches of the U.S. Government are tightly controlled by laws and regulations. Proprietary information of a competitor and government source selection information are protected under the “Procurement Integrity” provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 423, implemented in the Federal Acquisition Regulation (FAR) in 3.104). This statute identifies categories of information (e.g., a competitor’s proposals and the government’s evaluations of the competition) which are improper *per se* to receive or possess during the conduct of an agency procurement. The penalties (criminal, civil, and administrative) for violations are severe. For additional information, refer to UTC’s procedure on “Procurement Integrity.”

## What's the impact of other laws?

Improperly receiving a competitor's information may be actionable at law as an interference with a contractual relationship, commercial bribery, or misappropriation of trade secret. In addition, businesses which share information with competitors may be in violation of antitrust laws.

## Where can I get additional help?

If you need additional guidance, consult the business practices officer or counsel at your business unit.



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