

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Balancing Environmental Transparency and Business Confidentiality in Environmental Information Disclosure under Vietnamese Law

MA. NGUYEN THI HANG¹

ABSTRACT

The disclosure of environmental information by enterprises has become a fundamental requirement for ensuring environmental accountability, promoting sustainable development, and protecting public interests. However, this obligation often raises significant challenges when it conflicts with the protection of business confidentiality, especially concerning trade secrets and proprietary technologies. In Vietnam, while the legal framework mandates environmental transparency through the Law on Environmental Protection 2020 and related regulations, it lacks detailed mechanisms to balance this obligation with the legitimate need to safeguard confidential business information.

This article examines the conceptual foundations of environmental information and business confidentiality, analyzes the current Vietnamese legal framework, and identifies key gaps in harmonizing transparency and confidentiality requirements. Drawing on international practices, such as the OECD Guidelines, the Aarhus Convention, and U.S. EPA regulations, the paper highlights lessons for Vietnam in designing an effective legal mechanism. Finally, the article proposes specific legal reforms to protect both environmental rights and corporate interests, ensuring that environmental transparency does not undermine the legitimate protection of trade secrets. This balance is crucial for enhancing regulatory compliance, fostering corporate accountability, and promoting sustainable business development in Vietnam's integration into the global economy.

Keywords: *Environmental Information Disclosure; Business Confidentiality; Trade Secrets; Environmental Law; Transparency; Sustainable Development; Vietnam*

I. INTRODUCTION

In recent years, the disclosure of environmental information has emerged as a fundamental legal obligation for enterprises worldwide. Environmental transparency plays a critical role in

¹ Author is a Lecturer at Faculty of Economic Law, Hanoi Law University, Vietnam.

enhancing corporate accountability, protecting community interests, and promoting sustainable development. In Vietnam, the Law on Environmental Protection 2020 and related regulations impose obligations on businesses to disclose various categories of environmental information, including emission levels, waste management practices, and environmental impact assessments.

However, while environmental transparency is essential, it can also create significant tensions with the legitimate need to protect confidential business information. Many environmental disclosures may inadvertently reveal trade secrets, technological know-how, or sensitive operational data that are vital to a company's competitive advantage. This tension raises complex legal challenges: How should the law balance the public's right to access environmental information against a business's right to protect confidential information? What legal mechanisms are necessary to achieve this balance without undermining either environmental rights or commercial interests?

Although Vietnam's legal system acknowledges the importance of both transparency and confidentiality, existing regulations lack detailed provisions to harmonize these competing demands effectively. This gap may discourage full and accurate disclosure by businesses and weaken public trust in environmental governance.

This paper aims to analyze the conceptual foundations of environmental information and business confidentiality, critically assess the current Vietnamese legal framework, and draw lessons from international practices. Based on this analysis, the article proposes legal reforms to better balance environmental transparency and business confidentiality in Vietnam, contributing to the country's efforts toward sustainable development and global integration.

II. CONCEPTUAL FRAMEWORK: ENVIRONMENTAL INFORMATION AND BUSINESS CONFIDENTIALITY

Environmental information plays a crucial role in shaping corporate behavior, promoting transparency, and safeguarding public environmental interests. In the context of Vietnamese law, environmental information is broadly defined to include data related to environmental quality, pollution sources, waste management, natural resources, biodiversity, and activities that may cause environmental impacts² The Law on Environmental Protection 2020 classifies environmental information into publicly disclosed information, information subject to limited disclosure, and confidential information³ This categorization seeks to balance the public's

² Article 3.29, Law on Environmental Protection 2020 (Vietnam)

³ Articles 114–116, Law on Environmental Protection 2020 (Vietnam).

right to know with other legitimate interests, including national security, business confidentiality, and individual privacy.

Publicly disclosed environmental information typically includes environmental impact assessment (EIA) reports, environmental monitoring data, and corporate environmental compliance records. Meanwhile, information that may be subject to disclosure restrictions could involve details related to national defense projects or critical infrastructure security.

Business confidentiality, particularly trade secrets, encompasses information that derives independent economic value from not being generally known or readily ascertainable by others, and that is subject to reasonable efforts to maintain its secrecy⁴ In the environmental context, trade secrets may include proprietary technologies for waste treatment, pollution control methods, resource extraction techniques, and other environmentally significant industrial processes.

The intersection between environmental information disclosure and business confidentiality creates a complex legal landscape. When environmental transparency obligations are broadly framed without clear mechanisms to protect confidential business information, enterprises may face the risk of involuntary exposure of their competitive advantages. Conversely, overly broad claims of confidentiality can obstruct legitimate public access to critical environmental data, undermining environmental rights and public trust.

Hence, developing a coherent legal framework that defines, categorizes, and manages these conflicting interests is essential to ensure that environmental transparency obligations do not inadvertently erode business competitiveness while safeguarding the public's right to environmental information.

III. CURRENT LEGAL FRAMEWORK IN VIETNAM

A. Regulations on Environmental Information Disclosure in Business Activities

The obligation to disclose environmental information in Vietnam is primarily governed by the Law on Environmental Protection 2020 (LEP 2020), which establishes the principle that environmental protection activities must be conducted transparently and with public participation⁵. Several specific provisions set out the requirements for businesses to disclose information relating to their environmental performance and compliance.

Under Articles 114 to 116 of the LEP 2020, enterprises are required to disclose a wide range

⁴ Article 4.23, Law on Intellectual Property 2022 (Vietnam).

⁵ Article 4.3, Law on Environmental Protection 2020 (Vietnam).

of environmental information, including but not limited to:

- Results of environmental monitoring conducted during production, business, and service activities;
- Approval decisions for environmental impact assessment (EIA) reports;
- Compliance status with environmental permits and technical regulations;
- Information on incidents causing environmental pollution, degradation, or emergencies⁶.

Environmental Impact Assessment (EIA) reports, in particular, are a key mechanism for ensuring transparency prior to project implementation. Enterprises must prepare EIA reports and submit them for appraisal and approval by competent authorities, with the approved contents made publicly accessible⁷. Additionally, projects subject to EIA must organize community consultations to gather opinions from affected stakeholders, further enhancing transparency.

Beyond the EIA process, enterprises holding environmental licenses (such as environmental permits for waste discharge or hazardous waste management) are obliged to submit periodic environmental monitoring reports to relevant authorities. According to Decree No. 08/2022/ND-CP, enterprises must not only report but also publicly disclose environmental data on online information portals managed by environmental agencies⁸. These reports are intended to allow regulatory bodies and the public to monitor the ongoing environmental compliance of enterprises.

Furthermore, Article 114. of the LEP 2020 stipulates that environmental information must be disclosed "truthfully, promptly, and conveniently accessible" to ensure the public's right to information⁹. Enterprises must ensure that the disclosed data accurately reflects their environmental impacts and compliance status.

Despite these obligations, the law also permits certain exceptions, recognizing that some environmental information may not be disclosed if it falls within the scope of national security, trade secrets, or individual privacy¹⁰. However, the LEP 2020 does not elaborate detailed standards or procedures for classifying information into these categories, creating

⁶ Article 114.2, Law on Environmental Protection 2020 (Vietnam).

⁷ Article 34, Law on Environmental Protection 2020 (Vietnam).

⁸ Articles 99–102, Decree No. 08/2022/ND-CP dated January 10, 2022, detailing several articles of the Law on Environmental Protection.

⁹ Article 114.4, Law on Environmental Protection 2020 (Vietnam).

¹⁰ Article 114.5, Law on Environmental Protection 2020 (Vietnam).

ambiguities in practical implementation.

In sum, Vietnamese law establishes a robust framework for requiring businesses to disclose environmental information, with the dual aims of promoting transparency and enabling public oversight. However, the broad language used in defining disclosure obligations necessitates clearer operational guidance to prevent inconsistent or inadequate disclosures by enterprises.

B. Regulations on the Protection of Business Confidentiality in Environmental Matters

While Vietnamese law emphasizes environmental transparency, it simultaneously recognizes the necessity of protecting confidential business information to safeguard economic interests and foster innovation. Several legal instruments provide the foundation for the protection of business confidentiality in environmental matters.

The Law on Intellectual Property 2022 defines trade secrets as information obtained from financial or intellectual investment activities that is not generally known or easily accessible, capable of being used in business, and subject to measures to maintain confidentiality¹¹. Trade secrets may include technological processes, business methods, production formulas, and environmental management techniques, all of which could be implicated during environmental information disclosures.

Under the Law on Intellectual Property 2022, unauthorized acquisition, use, or disclosure of trade secrets is prohibited. Enterprises are entitled to request protection of trade secrets when disclosing information that may otherwise expose valuable proprietary knowledge¹². This protection mechanism is vital in sectors such as energy production, chemical manufacturing, and waste treatment, where environmental disclosures often intersect with sensitive technological information.

In addition to intellectual property law, the Law on Protection of State Secrets 2018 addresses confidentiality from the perspective of national security¹³. Certain environmental data related to defense projects, critical infrastructure, or strategic resources may be classified as state secrets. This classification prevents disclosure not only for the protection of economic interests but also for safeguarding national security.

Furthermore, the Law on Access to Information 2016 reinforces the confidentiality regime by providing exceptions to disclosure obligations. Information classified as state secrets, trade

¹¹ Article 4.23, Law on Intellectual Property 2022 (Vietnam).

¹² Law on Intellectual Property 2022 (Vietnam).

¹³ Article 7, Law on Protection of State Secrets 2018 (Vietnam).

secrets, or personal data is exempt from mandatory disclosure¹⁴. Public authorities receiving environmental information from businesses must assess whether the information falls within these protected categories before deciding on disclosure.

However, a significant challenge arises from the lack of detailed procedural guidelines governing how businesses should claim confidentiality protection and how competent authorities should evaluate such claims. There is no standard process for enterprises to mark or justify sensitive information when submitting reports, nor is there a clear appeals mechanism for disputing decisions on disclosure. This absence of clarity can result in inconsistent application of confidentiality protections and create legal uncertainty for enterprises attempting to comply with environmental disclosure obligations while safeguarding their proprietary interests.

Thus, while Vietnam's legal system provides a legal basis for protecting business confidentiality, the framework remains fragmented and underdeveloped in operationalizing confidentiality in the context of environmental information disclosure.

C. Limitations in Balancing Transparency and Confidentiality under Current Vietnamese Law

Despite the progressive developments in Vietnam's environmental and information laws, significant limitations persist in balancing environmental transparency with business confidentiality. These limitations manifest both at the legislative level and in practical implementation.

First, the current legal framework lacks specific procedural mechanisms for confidentiality claims in environmental disclosures. While the Law on Environmental Protection 2020 and the Law on Access to Information 2016 recognize the need to protect trade secrets and state secrets, they do not provide enterprises with clear guidelines on how to submit confidentiality claims when disclosing environmental information¹⁵. In contrast to practices such as the United States Environmental Protection Agency (EPA) procedures for Confidential Business Information (CBI) claims¹⁶, Vietnamese law does not mandate enterprises to formally substantiate confidentiality requests with evidence or justifications. This omission leads to legal uncertainty and inconsistent practices among both businesses and regulatory authorities.

¹⁴ Article 6, Law on Access to Information 2016 (Vietnam).

¹⁵ Articles 114–116, Law on Environmental Protection 2020 (Vietnam); Articles 6–7, Law on Access to Information 2016 (Vietnam).

¹⁶ United States Environmental Protection Agency (EPA), *Confidential Business Information (CBI) Regulations*, 40 CFR Part 2.

Second, there is no independent or standardized review process for determining whether environmental information qualifies for confidentiality protection. Vietnamese law leaves substantial discretion to regulatory authorities without establishing objective criteria or transparent procedures for balancing public interests against private business interests. As a result, authorities may either err on the side of excessive disclosure, risking the exposure of sensitive information, or overprotect information, undermining public access to crucial environmental data.

Third, the categorization of information subject to confidentiality is vague and overlapping. While environmental information related to national security is explicitly protected under the Law on Protection of State Secrets 2018, the distinction between trade secrets and other sensitive but non-classified environmental information remains unclear¹⁷. This ambiguity complicates the decision-making process regarding what information should be disclosed or withheld, especially when the same data may have environmental significance and commercial value simultaneously.

Fourth, there is no dedicated appeals mechanism for businesses to challenge disclosure decisions or for the public to contest unjustified confidentiality claims. The absence of a formal dispute resolution or administrative review procedure weakens transparency and accountability, leaving both businesses and the public without effective remedies in cases of disagreement.

Finally, awareness and capacity gaps among regulatory authorities and businesses exacerbate implementation challenges. Many enterprises, particularly small and medium-sized enterprises (SMEs), lack the legal expertise to properly identify and claim confidential information. Similarly, some regulatory officials may lack training in handling confidentiality issues, leading to inconsistent interpretations and enforcement.

In summary, although Vietnam's legislative intent aligns with international standards in recognizing both environmental transparency and business confidentiality, the practical mechanisms to harmonize these interests are still underdeveloped. Addressing these limitations is essential to create a legal environment that fosters both responsible business conduct and effective public participation in environmental governance.

¹⁷ Article 7, Law on Protection of State Secrets 2018 (Vietnam).

IV. INTERNATIONAL APPROACHES TO BALANCING TRANSPARENCY AND CONFIDENTIALITY

A. Additional International Experiences

Beyond the OECD, Aarhus Convention, and the United States, several other jurisdictions have also developed legal frameworks to balance environmental transparency with the protection of confidential business information.

In *Singapore*, the Environmental Protection and Management Act (EPMA) requires enterprises to comply with environmental standards and reporting obligations¹⁸. However, when disclosing environmental data, Singaporean authorities apply confidentiality rules under the Public Sector (Governance) Act and related regulations, allowing certain information to be withheld if its disclosure would prejudice commercial interests or industrial innovation¹⁹. Notably, Singapore emphasizes a case-by-case assessment approach, where authorities must consider the sensitivity of the information, the potential harm of disclosure, and the public interest in accessing the data. This approach helps maintain investor confidence while promoting environmental governance.

In the **European Union (EU)**, the Environmental Information Directive 2003/4/EC establishes a right of access to environmental information held by public authorities²⁰. However, the Directive also recognizes several exceptions to disclosure, including the protection of commercial or industrial confidentiality where such confidentiality is provided for by national or EU law to protect a legitimate economic interest²¹. Authorities must balance these exceptions against the overriding public interest in disclosure. Furthermore, decisions to refuse access must be justified, and applicants have the right to appeal refusals to independent review bodies. This structured approach ensures that confidentiality is not used arbitrarily to limit transparency.

These additional examples reinforce critical principles for balancing transparency and confidentiality:

- Confidentiality should only be justified when disclosure would cause substantial harm to legitimate commercial interests.

¹⁸ Environmental Protection and Management Act (EPMA), Singapore, Revised Edition 2008.

¹⁹ Public Sector (Governance) Act 2018, Singapore, Part 4 – Access and Protection of Information.

²⁰ Directive 2003/4/EC of the European Parliament and of the Council on Public Access to Environmental Information.

²¹ Article 4(2)(d), Directive 2003/4/EC.

- The public interest in accessing environmental information must be given significant weight, especially in cases concerning potential harm to health or the environment.
- Disclosure decisions must be transparent, reasoned, and subject to appeal or independent review mechanisms.
- Key Principles Drawn from International Practices
- Synthesizing international experiences, several core principles emerge that are essential for achieving an effective balance between environmental transparency and business confidentiality.

First, transparency should be the default rule, meaning that environmental information should be made publicly accessible unless a clear and compelling justification for confidentiality exists.

Second, the principle of proportionality must guide decisions to restrict disclosure, ensuring that limitations are narrowly tailored and proportionate to the legitimate interest being protected.

Third, businesses seeking confidentiality must substantiate their claims by providing credible and detailed justifications, rather than relying on blanket assertions.

Fourth, independent review mechanisms should be available to allow challenges to disclosure or non-disclosure decisions, reinforcing fairness and accountability.

Fifth, the public interest in accessing environmental information — particularly in matters affecting health, safety, and significant environmental risks — should generally outweigh commercial confidentiality concerns.

Finally, clear procedural standards must be established, setting out predictable and transparent processes for submitting, assessing, and deciding on confidentiality claims.

These principles collectively offer a robust framework for Vietnam to consider in reforming its environmental information disclosure regime, ensuring that both public interests and legitimate business concerns are appropriately safeguarded.

Vietnam can draw upon these international experiences and principles to develop a more balanced, transparent, and credible legal framework for environmental information disclosure.

V. RECOMMENDATIONS FOR VIETNAM

Drawing from international best practices and the current gaps identified in Vietnam's legal framework, several recommendations are proposed to achieve a balanced and effective system

for environmental information disclosure while protecting legitimate business confidentiality.

First, Vietnam should establish a clear legal distinction between categories of environmental information. The Law on Environmental Protection 2020 should be supplemented with detailed guidelines specifying what types of information must be mandatorily disclosed, what types may be eligible for confidentiality protection, and under what conditions²². This classification should be aligned with international principles of transparency and proportionality, ensuring that non-disclosure is limited to cases where substantial harm to legitimate economic interests can be demonstrated. A clearer legal taxonomy would minimize arbitrary withholding of data and foster greater certainty for enterprises and regulators alike.

Second, a standardized, transparent procedure for confidentiality claims should be implemented. Enterprises disclosing environmental information should be required to formally assert confidentiality claims at the time of submission, accompanied by specific, evidence-based justifications²³. Regulatory authorities must assess these claims independently, using objective and publicly available criteria. Such a mechanism would prevent abusive confidentiality claims while protecting genuinely sensitive business information. Vietnam can learn from the U.S. EPA model, where substantiation of claims is mandatory, and the burden of proof lies with the enterprise.

Third, regulatory authorities should be required to conduct a proportionality assessment when considering confidentiality requests. Following the approach of the Aarhus Convention and the EU Environmental Information Directive, authorities should weigh the harm of disclosure to business interests against the benefits of public access, especially where environmental and public health concerns are involved²⁴. Establishing formal assessment criteria would enhance the consistency, transparency, and legitimacy of disclosure decisions.

Fourth, Vietnam should strengthen public participation and oversight mechanisms. Establishing an administrative appeals process or an independent review body for confidentiality-related decisions would allow both businesses and the public to challenge disclosure or non-disclosure determinations²⁵. Transparent procedures and accessible remedies would reinforce accountability, reduce perceptions of bias, and promote trust in environmental governance.

Fifth, capacity building initiatives are essential. Regulatory officials should receive

²² OECD, *OECD Guidelines for Multinational Enterprises* (2011), Commentary on Chapter VI, para. 33.

²³ United States Environmental Protection Agency (EPA), *Confidential Business Information (CBI) Submission Requirements*, 40 CFR 2.204.

²⁴ Article 4(4)(d), Aarhus Convention, 1998; Article 4(2)(d), Directive 2003/4/EC.

²⁵ UNECE, *Implementation Guide to the Aarhus Convention* (2014), Chapter II, Access to Information, p. 66–68.

specialized training on evaluating confidentiality claims, balancing competing interests, and applying proportionality principles. Similarly, businesses, particularly small and medium-sized enterprises (SMEs), should be educated about their disclosure obligations and rights concerning confidential information. Capacity building would create a culture of compliance, improve the quality of information disclosed, and reduce disputes over confidentiality.

Finally, Vietnam should consider adopting a public interest override mechanism. In situations where environmental disclosures involve potential threats to public health or significant environmental risks, the public interest in disclosure should presumptively outweigh business confidentiality concerns. Embedding such a principle into the legal framework would align Vietnam with progressive international standards and enhance the credibility of its environmental governance system.

Implementing these recommendations would help Vietnam develop a coherent and practicable system that balances environmental transparency with business confidentiality. A balanced legal framework would promote responsible corporate behavior, strengthen public trust, and support Vietnam's broader goals of sustainable development and deeper global economic integration.

VI. CONCLUSION

Environmental transparency and business confidentiality constitute two fundamental but sometimes competing principles in contemporary environmental governance. While public access to environmental information fosters accountability, empowers communities, and supports sustainable development, safeguarding confidential business information remains vital for protecting innovation, securing competitive advantages, and encouraging investment.

Vietnam's legal framework, particularly the Law on Environmental Protection 2020, has made notable advances in mandating environmental information disclosure. However, the absence of detailed procedural mechanisms to balance disclosure obligations with the protection of legitimate business interests continues to pose challenges. Uncertainties regarding the classification, management, and appeal of confidential information claims risk undermining both environmental transparency and the protection of commercial rights.

International experiences, including the OECD Guidelines, the Aarhus Convention, the European Union's Environmental Information Directive, and the United States Environmental Protection Agency's procedures, demonstrate that it is possible to reconcile transparency and confidentiality through structured legal frameworks. Key principles such as transparency as the default, proportionality, substantiation requirements, independent review mechanisms, and

public interest overrides offer valuable models for reform.

Looking forward, Vietnam has a critical opportunity to strengthen its environmental governance by adopting international best practices tailored to domestic conditions. By refining its legal standards, establishing robust procedural safeguards, and fostering a culture of responsible disclosure, Vietnam can simultaneously advance environmental protection, promote sustainable business practices, and enhance its credibility in the global arena.
