



Guide  
& Template



# Implementing a CI Ethics Policy

# Putting an Ethics Policy in Place

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Anyone who considers competitive intelligence (CI) to be what they do for a living has likely experienced the following scenario on at least one occasion. You meet someone for the first time and in the course of the conversation, you explain a bit about your job. Then, as if a light bulb turns on in their head, your new acquaintance blurts out something like, “Oh, I get it, you’re a spy!” While not accurate, this perception, which is unfortunately reinforced by an occasional eye-catching headline and characterization in the press of CI as a cloak-and-dagger operation, becomes something those of us in competitive intelligence must deal with.

Thankfully, having an ethics policy helps allay this misperception. First of all, it provides the operational grounding required to keep you and your CI effort on the proper side of the legal and ethical divide. In addition, it helps with public relations by highlighting a legitimate, documented business practice for your senior management and other internal customers.

So, if you are doing competitive intelligence at a company that lacks an ethics policy or if your ethics policy has not been reviewed or updated in years, it is important that you find the time, energy, and resources to put an up-to-date policy in place. Whether it is ultimately called an “ethics policy,” a “code of ethics,” or an “ethical code of conduct” is not important. What is important is that your company has a functional guideline for the collection and analysis of information and the subsequent dissemination of intelligence.

## Before you start

Before starting to develop an ethics policy, you should consider the following:

- **Does your company have a business conduct guide?** If so, the competitive intelligence ethics policy should be in alignment with it. (Note: a corporate business conduct guide is likely to be too general to appropriately cover CI operations and there is a need for a distinct CI ethics policy.)
- **Have you had discussions with your legal staff on this issue?** The ethics policy that you ultimately develop should be appropriate for your company and acceptable to your internal legal counsel. You should also understand the implications behind the *Economic Espionage Act of 1996* and ensure that your legal staff is versed in it as well.
- Are there industry-specific mores, especially as they relate to CI, which could influence your company’s ethics policy? Be alert for situations where you may be more likely to draw a legal complaint.

## Creating your ethics policy

When developing an ethics policy:

1. **Review what has already been done.** In addition to studying the *SCIP Code of Ethics*, evaluate the recommendations and example ethics policies in this publication. Also, seek out competitive intelligence colleagues at other firms and ask them if they would be willing to share their ethics policies with you.
2. **Research instances of ethical lapses in other companies.** Real-life examples of ethical lapses help to remind you why you are working to create an ethics policy. They are also useful for conversations inside your company as you seek support.

3. **Create a draft ethics policy.** A brainstorming session with your company's competitive intelligence team (or by yourself if you are a CI army of one) is a good way to start. You may want to use the *SCIP Code of Ethics* as a foundation, and supplement it with additional company-specific items. Utilize the best ideas from your review, recognizing the importance of ensuring that the items you choose to be in your policy are appropriate for your company.
4. **Avoid the temptation to list all conceivable situations.** It's not possible to spell out every possible ethics occasion ahead of time, so it is important to have a process by which specific future ethical questions can be addressed within a given process framework.
5. **Seek comment on your proposed ethics policy from your senior management sponsor.** (If you do not have a senior management sponsor, try to cultivate one.)
6. **Review your proposed ethics policy with the legal department to get their approval.**

## After you have your policy

Once the ethics policy is created and blessed by management and legal:

- **Have every competitive intelligence person in your firm sign the document indicating that they understand and will abide by the policy.**
- **Evangelize about your ethics policy within your company.** Post it prominently on your intranet site. Ensure that your ethical approach is taught to and supported by your internal CI users and clients. (At some point, a client may pressure you to "bend the rules." Having established your policy and sought out support and approval from senior management and legal, you will be well positioned to politely but firmly push back on the request.)
- **Keep in mind that the ethical approach to CI is not limited to compliance by members of your internal CI community.** It also applies to any outside vendors retained to do CI on your company's behalf. Outside vendors should not be retained as a way to circumvent your internal ethics policy. Your company's ethics policy should be part of any request for proposal and adherence to it by the vendor should be stipulated in the contract.
- **Recognize that a "gray zone" exists.** Situations will arise that do not fall neatly into "clearly ethical" or "clearly unethical" realms. Establish a review process inside your company to adjudicate those cases as they arise.
- **Proactively create a statement that your corporate media relations people can use in the event that your company is approached regarding CI.** In this way, your company has a positive, thoughtful statement on the company's CI position that is ready to go, thus avoiding the need for a disjointed message or a terse "no comment." The statement should include a reference to your ethics policy.
- **Establish a schedule for an annual review.** Make any changes required by new circumstances, and have all CI personnel sign the document again.

In the end, creation of an ethics policy should not take much time. The benefits, however, will be substantial. It can help avoid public relations headaches, which can damage your reputation and that of your firm, and it can help internally because your proper actions will be seen as a sign of professionalism. Plus, you can help keep yourself off the front page of your local newspaper.

# Implementing an Effective Ethics Policy

Kirk W.M. Tyson, Consultant and Managing Director, Tyson Heinz

Timely and relevant knowledge about competitors and other market players is necessary for making good strategic business decisions. Markets are becoming increasingly global, and the information revolution is slashing the time available for effective decision making. Competitive intelligence processes to distill and expedite the information are essential in managing this revolution. These processes allow decision-makers to focus on the most relevant aspects of their company and industry.

Yet one problem has plagued the field of competitive intelligence from the beginning: the abuse of ethics. In fact, as the field has grown, the condition has worsened. I suspect that it will prove to be extremely tough to eradicate, if only because competitive intelligence is highly vulnerable to corruption.

By now, most companies have at least developed generic ethical guidelines. Many companies take that a step further and develop guidelines specific to the competitive intelligence process.

## Not just words on paper

Every company should establish a set of ethical guidelines, but this is only the beginning. The problem with ethics is not establishing a code but implementing it. To ensure compliance, a monitoring mechanism must be developed. In addition, training programs and a reaffirmation process must help employees to truly internalize the guidelines. The employees' personal philosophy should become the same as the firm's. Employees then can make common-sense decisions on a day-to-day basis about what is ethical and what is not.

I strongly recommend an eight-step implementation plan:

- 1. Stress guidelines to prospective employees.** All prospective employees should receive oral and written descriptions of the scope of work and the ethics involved. The myths of intelligence work should be pointedly dispelled very early on.
- 2. Outline guidelines in new-hire materials.** New employees should receive ethical guidelines on their first day of work. Each employee should sign a statement attesting that she received, read, understands, and is willing to abide by the ethical guidelines. This action immediately underscores the organization's commitment to high ethical standards. It is easier to imbue a new employee with the standards you require than it is to break established employees of questionable conduct.
- 3. Highlight guidelines in the employee manual.** Attach a cover sheet to the employee manual indicating the location of the ethics discussion. Again, employees should sign a statement attesting that they have read and understand the ethics section.
- 4. Include guidelines in job descriptions.** The job description for a competitive intelligence professional should include the job responsibilities and the ethical guidelines to be followed. More importantly, the job description should be reviewed and revised at least semi-annually.
- 5. Prominently display guidelines.** Find a conspicuous place to post your ethical guidelines, such as on a bulletin board. Don't bury them in the middle of the OSHA regulations! Properly placed, they serve as a daily reminder of acceptable practices. Each employee in the office should receive a copy of the guidelines.

- 6. Conduct periodic education programs.** When training new employees, a segment on ethics is a must. Include an ethics segment in all subsequent training programs, too. As you conduct advanced training in interviewing techniques, strategic analysis, and report writing, reinforce the ethical guidelines. Regularly scheduled problem-solving meetings and an open-door policy both encourage proper intelligence gathering techniques. Highlighting the ethical alternatives to an intelligence gathering puzzle fosters employee commitment to appropriate ethical conduct.
- 7. Require sign-offs on key deliverables.** Have a project time reporting system with daily time reports, showing number of hours by project. Require a signature on the time report confirming that the work was performed in compliance with ethical guidelines.
- 8. Monitor for compliance.** Although it may spark thoughts of “big brother,” the sensitive nature of competitive intelligence demands scrutiny. True competitive intelligence professionals accept periodical monitoring of their techniques as a small price to pay for high ethical standards.

## Play to win, but. . .

You want to win the business strategy game in the short term as well as in the long term. This goal can be achieved, but only when you play by the rules.

The first step should be to admit, honestly, that no employee is perfect and that ethical violations have occurred and could occur again if preventive measures are not taken. Strongly encourage candid employee discussion of the issues. An open forum helps identify problems and reinforces the notion that your firm is committed to high ethical standards. Next, develop and fine-tune your ethical guidelines. Implement them throughout your organization, monitor compliance on a continuous basis, and promptly report results.

For strong ethical standards to be established and maintained, you must wage a vigorous, constant campaign. It should be vigorous because the energy and commitment you exhibit are infectious, and those characteristics will motivate others. And it should be constant because the biggest threat to ethics is complacency, to think you have everything well in hand. That is precisely the point when things begin to get out of hand.

Will this approach, and its emphasis on implementation, eliminate ethics violations entirely? No process is foolproof, but short of round-the-clock policing, you should be able to attain a 99% compliance rate. Just as important, you will still be able to gather the intelligence that will help to make you a winner in your marketplace.

# Does Your Ethics Program Meet the “Seven Standards?”

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## Compliance and ethics

Amendments to the *Sentencing of Organizations* strengthen the criteria an organization must follow in order to demonstrate they have an effective compliance and ethics program. Those standards apply to corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments, and non-profit organizations. Enterprises, through their boards of directors and executives, are required to:

- Promote internal values of ethical conduct and legal/regulatory compliance, and initiate effective, actively managed compliance and ethics programs designed to prevent and detect criminal conduct.
- Examine their operations and determine areas where ethical or compliance lapses might occur, offer universal training on legal standards and obligations, and fund an ethics program with sufficient authority and resources to succeed.

## Revisit your ethics program

This situation should be of great interest to competitive intelligence (CI) professionals—a body operating under strict ethical guidelines—as they provide a clear framework for evaluating their own ethical practices. Practitioners are urged to consult with their corporate counsel to find how the SCIP Code of Ethics and their own company ethics policies, objectives, and guidelines will interact in the new regulatory environment. This is not a situation where casual conversations should be allowed to influence your decision-making, and you should seek and accept professional guidance.

While this article should under no circumstances be considered legal advice, the following information, based on the “user friendly” *Amendments to the Sentencing Guidelines of May 10, 2004*, reports what regulators propose as characteristics of effective compliance and ethics programs. More information is available at [www.ssc.gov](http://www.ssc.gov) and readers are urged to keep abreast of possible changes or special circumstances relevant to their enterprise.

Note: Many non-US governments have similar criteria, which should be examined by CI practitioners operating in those jurisdictions; respecting local policies and preferences is a critical success factor.

## Guideline 1

An organization must establish standards and procedures to prevent and detect criminal conduct.

### Questions for CI professionals:

- Does your CI department or staff have a clearly defined, counsel-reviewed method for reviewing information collection and analysis activities to ensure that all practices are within the law?
- Are audit results reported to senior management?
- Is compliance “built into” the system? For example, do templates require reporting the source of all information?

## Guideline 2

The organization's highest governing authority (HGA) must be "knowledgeable about the content and operation of the compliance and ethics program."

- Specific HGA members must exercise reasonable oversight over implementation and effectiveness.
- Specific staff must have day-to-day operational authority over the program, adequate resources, and access to the HGA.
- Periodic risk assessments must be made and reported to the HGA.

### Questions for CI professionals:

- Has a formal risk analysis of company CI practices been performed, preferably by an outside party?
- Is it kept updated?
- Are CI staff members aware of the existence of an "ethics officer," how they may be contacted, and escalation procedures for concerns?

## Guideline 3

The organization shall take reasonable steps to:

- Communicate the program's standards and procedures to members of its HGA, employees and agents.
- Conduct effective training programs appropriate to such individuals' roles and responsibilities.

### Questions for CI professionals:

- Have all CI Professionals and functionaries been trained in acceptable business practices related to their particular roles and responsibilities? Is the training formally tracked?
- How often is it updated?
- Are clear standards available delineating what sorts of requests should be refused for ethical or compliance reasons?

## Guideline 4

The organization must take reasonable steps to ensure that individuals with "substantial authority:"

- Have not engaged in illegal activity.
- Have not behaved in a manner inconsistent with the goals of the program.
- "Substantial authority" is decided on a case by case basis, but reflects "a substantial measure of discretion in acting on behalf of an organization."

### Question for CI professionals:

- Did all such persons under the control of the CI manager undergo company-approved background checks?
- How often are checks repeated?
- Are policies in place to guide managerial actions if problems are found?

## Guideline 5

The organization must take reasonable steps to:

- Evaluate whether the program is followed.
- Periodically assess its effectiveness.
- Possess and publicize a method for reporting or seeking guidance on program issues “without fear of retaliation.”

### Questions for CI professionals:

- Does the company have a “whistle-blower protection program,” including an anonymous hotline for potential ethics and compliance violations?
- Is the program effectively advertised to employees?
- Do CI staff members know where to turn for anonymous reporting or guidance on ethical issues?
- Has an independent (internal or external to the company) agent ever measured CI compliance? Is an exam scheduled? Is the examination handbook available for review?

## Guideline 6

The program must be actively promoted and consistently enforced throughout the organization, including:

- Incentives to encourage compliance.
- Disciplinary measures for engaging in or failing to report proscribed behaviors.

### Questions for CI professionals:

- Is ethical behavior a consideration on performance reviews? Does missing a deadline or failure to provide information for ethical reasons count just as much toward professional success as a major intelligence success?
- Are there clear signs that the CI management considers this to be of concern?
- Is practitioner tradecraft, as such, periodically assessed for compliance?

## Guideline 7

The organization must take reasonable steps to:

- Respond appropriately to criminal behavior when detected.
- Prevent further similar conduct including making any necessary changes to their program.

### Questions for CI professionals:

- Are CI processes sufficiently documented so that they can be reviewed and changed?
- Do reviews frankly reflect reality or are ethical problems “hidden?”

## Demonstrate and document your commitment

Ethics is long past the point where “careful consideration” of its dictates as just one component of a research assignment is required—complete, total and enthusiastic acceptance of and compliance with both corporate policies and “common community standards” is now a critical success factor. Make sure you can both demonstrate and document your commitment.

# Policy for Collecting Competitive Information

## Procter & Gamble

Competitive intelligence is the process of understanding and anticipating the competitive environment in which P&G operates. It has a strong foundation within our Purpose, Values and Principles (PVP), especially our Passion for Winning, External Focus, and Seeking to be the Best. We should compete aggressively and fairly. Information about our competitors can be a powerful tool in our business, but only if it is obtained and used in accordance with P&G's PVP and the policy described below.

Because the obtainment of competitive intelligence can occur in almost limitless circumstances, there is no set of rules that can specifically address every conceivable circumstance. Accordingly, the Company expects its employees to follow the letter and spirit of these Ten Core Principles as they proceed in this area, and to seek the perspective of their senior management and P&G Legal to assess how to proceed whenever they are uncertain.

### Ten Core Principles

1. *No competitive information is worth jeopardizing Procter & Gamble's reputation or your own.*
2. We only seek to obtain competitive intelligence in compliance with applicable laws. At minimum, no P&G employee may:
  - Take another company's proprietary information without that company's authorization;
  - Obtain another company's proprietary information as a result of deception, misrepresentation, promises or threats;
  - Receive another company's proprietary information from someone that you know or that you have reason to believe was obtained without that company's authorization.
3. We only actively pursue information that will add value to our business decision-making.
4. We always respect the right of other companies to protect their proprietary information. Never encourage or pressure others to violate their obligations to protect the confidentiality of their current or former employer's proprietary information, or information given to them under a confidential disclosure agreement.
5. We never misrepresent or mislead anyone about our relationship with P&G.
6. We never ask or permit a contractor or other third party acting on our behalf to act inconsistently with this policy.

7. We do not jeopardize our relationship with suppliers, customers or other third parties by making promises or threatening the loss of future business or other negative consequences with the intent to get information. Individuals should not be pressured to reveal proprietary information or betray confidences. This also applies to competitor's former employees who may be contacted in the course of normal business or when doing competitive research.

8. If a competitor's proprietary information is revealed through the intentional but careless act of its employees or agents (e.g., talking loudly in a public place), we may use that information provided there was no misrepresentation or inducement to encourage it. However, we will not use proprietary information that has been lost by the owner in a manner which was clearly a mistake or accident (e.g., sealed documents left in a public place).

9. To prevent violating or appearing to violate the antitrust and anti-monopoly laws throughout the world, P&G should generally avoid direct contact with our competitors, their employees or agents where that contact might involve information regarding pricing, promotions, product plans or other proprietary information (as defined below). If and when a need arises to make direct contact with a competitor (e.g., to obtain information of the sort that a company generally makes available to the public through its public affairs or investor relations departments), all such contacts must comply with the "Procedures for Direct Contact with Competitors, their Employees or Agents," the Company policy on Trade Associations (both available on CI Net) and after consultation with P&G Legal.

10. It is each employee's personal responsibility to know and understand all applicable Company policies and procedures before seeking any competitive information. Whenever you are uncertain about how to proceed, contact P&G Legal immediately. Before acting in this sensitive area of competitive information, consider how P&G or you, as P&G's employee, would react if you learned a competitor was doing the same thing regarding P&G. If you are still in doubt about something you want to do, *avoid the risk – simply don't do it.*

Compliance with this policy is expected of every employee, and will be periodically audited by Internal Controls. Violations of this policy may result in disciplinary actions up to and including termination.

### **What is "Proprietary Information" or a "Trade Secret"?**

"Proprietary Information" and "Trade Secret" are interchangeable terms that describe any information used in one's business that represents a competitive advantage and that is kept confidential by that company. Not all confidential information is proprietary, such as organization structure. For guidance, following are examples of information that P&G considers to be proprietary. Proprietary information (of competitors) may include, but is not limited to, the following:

- Marketing and advertising plans
- Specific areas of research and development (unless revealed publicly through external research, intellectual property, or other public disclosure)
- Project and/or initiative work, timelines
- Product formulation functionality or other characteristics
- Processing methods, production schedules
- Testing and evaluation procedures and/or results
- Pricing, cost and profit figures
- Construction plans
- Other confidential information

The law protects proprietary information so long as the owner takes appropriate steps to maintain their confidentiality. Once the proprietary information is shared or disclosed without appropriate protection, the information has entered the public domain and loses its protected status.

## **What are Antitrust considerations when contemplating interaction with competitors?**

The United States and many other countries have enacted antitrust, monopoly, competition or cartel laws. The basic objective of these laws is to preserve free and open competition in the marketplace—an objective P&G strongly supports. Severe criminal and civil penalties may be imposed on P&G, and on you, if you authorize or participate in a violation of the antitrust laws.

Typical antitrust violations are matters like price fixing, joint refusals to deal with a third party, allocations of markets, customers, or territories. Circumstantial evidence, which is used to prove these violations, can be drawn from internal business documents as well as situations where competitors meet or could meet to reach anticompetitive agreements (e.g. trade association meetings). Such contacts could even be indirect, through customers, suppliers or other intermediaries. Therefore the general rule of thumb at P&G is “no contact with competitors,” especially on topics listed above as examples of proprietary information.

## **How Might We Encounter Competitive Information?**

The examples below review various ways in which P&G and its employees may encounter competitive information and provide guidance as to how to manage the information in line with legal requirements and the Core Principles listed above.

The scenarios reviewed below are only a few examples of the various situations where competitive information is found. We’ve tried to provide some guidelines to help you apply the corporate Purpose, Values and Principles. It would be impossible to cover every possible situation, and therefore trust that you will make the right decision. If you ever find yourself in a “gray area”, where you aren’t exactly sure whether something is right to do, you should ask your legal contact (reference at end of document) prior to taking any action. If this is not feasible, err on the side of caution and avoid the risk of making the wrong decision.

*It is important to note that this policy applies globally. When gathering information outside of the U.S., strict U.S. law can still apply to a U.S. based company like P&G. Of course, P&G complies with all laws where it does business.*

## **Policy for Obtaining Competitive Information**

### ***From public sources***

There is a wealth of information available from sources open to the public that should be explored first before venturing into more risky areas. Some examples follow:

- News media
- Libraries
- Documents filed with government agencies
- Universities
- The Internet
- Information intentionally disclosed by company in annual reports
- Public speeches
- Other public sources

### ***From public property, sidewalk or road***

As a general rule, information that is observable from public property or highways may be obtained by, for example:

- Observing the number and type of delivery vehicles going to and from a manufacturer's plant.
- Taking photographs of anything you can see from a public area.

Because there may be legal restrictions against the use of eavesdropping or other surveillance equipment or techniques, P&G Legal should be consulted before using anything other than a still camera from a public place. For example,

- Do not take aerial photographs of a manufacturing plant.
- Do not use technical equipment (e.g. microphones, video cameras).

Even where it may be legal to do so, P&G chooses not to engage in techniques that might be regarded as unsavory or reflecting poorly on the Company, for example:

- Do not search through trash receptacles or dumpsters.
- Do not position yourself in the public area of a restaurant, bar or hotel that is being used by a competitor's employees solely for the purpose of trying to pick up trade secret information.

### ***At trade shows and open houses***

Do obtain promotional materials and samples that are being openly distributed.

If offered, you may tour a competitor's facility, but should identify yourself as an employee of P&G.

Never take measures to hide or misrepresent your identity as an employee of P&G. Be open and honest.

### ***In the course of normal job duties***

Do obtain information shared by a customer/supplier if a competitor has intentionally given information to them, and if you are sure that they have no obligation to hold it confidentially.

It is OK to ask for information about a competitor from customers/suppliers, as long as you do not pressure them, promise anything of value in return, or threaten them in any way.

Do not misrepresent your relationship or affiliation with P&G to anyone.

### ***Through personal contact with individuals who have information about a competitor***

(e.g. social contacts, suppliers, consultants, ex-employees of competitors, etc.)

It is OK to receive information if:

- It is freely given.
- If the individual has ethically obtained it and you are confident this person is under no obligations to hold it confidentially.
- If this person knows you work at or are affiliated with P&G.

Do not pressure individuals to disclose information, or make promises or threats to get it.

From time to time, it may be faster and/or cheaper to directly contact a competitor's employees or agents affiliated with a competitor to gather non-proprietary information that could be made available to the public. In these instances, you must follow the "Procedures for Direct Contact with Competitors, their Employees or Agents" available on CI Net.

### ***By accident or mistake***

There may be occasions where you come upon proprietary information that clearly must have been dropped or lost by accident. In these cases, you should immediately seal and deliver the information to P&G Legal. For example:

- A P&G supplier mistakenly faxes a document to P&G that it intended to send to a competitor.
- An envelope containing sealed, trade secret information is accidentally dropped in the parking lot by a competitor and found by a P&G employee.
- A briefcase is left behind in the airport and found by a P&G employee.

### ***By consultants***

If you must use a third party consultant to perform competitive intelligence tasks, only those listed on the Corporate Competitive Intelligence "Approved Vendor List" may be used, and the proper procedures must be followed (see reference at end of document).

Consultants should follow the same information gathering principles and policy as P&G employees, except they need not disclose that P&G is its client. However, they cannot misrepresent themselves or the intent of their information collection.

Consultants should never be asked or permitted to do something a P&G employee would not do. Consultants (and P&G employees) should be able to identify and document sources used for competitive intelligence gathering.

Consultants utilized by P&G, as well as those P&G employees engaging them, may be subject to reviews/audits by P&G in order to ensure that they (and their employees or contractors) are in compliance with the standard contract and these Principles & Policy.

### **How Do We Protect P&G's Own Trade Secrets or Proprietary Information?**

Of course, P&G's trade secrets are the lifeblood of our business. This policy should also raise awareness of what our competitors (who may have less restrictive policies) could do to collect information about P&G. It is your responsibility to protect the proprietary information that your management has entrusted to you. Assume that others will do what we are asking you not to do, and manage your behavior accordingly. In order to protect P&G's trade secret information, ALL employees are responsible for both:

1. Understanding what company information; and work they are doing is proprietary and
2. Taking the appropriate steps to protect them. If you have any questions about making this determination, please contact the Corporate Competitive Intelligence organization or P&G Legal.