

Competitive Intelligence Gathering v. Corporate Espionage

Of course, companies must be aware of (a) what the competition is doing and (b) that their competitors are interested in what they are doing as well. A company's written ethics/policy statement should include exactly what competitive conduct is acceptable and what is forbidden in order to assist both those who need competitive information, as well as those who have an obligation to prevent any illegal or unethical conduct against their employer. The goal is to prevent either side from going beyond appropriate intelligence gathering to illegal and unethical espionage.

Some typical situations where corporate espionage might be involved are:

1. A person seeking competitive information who does not disclose all relevant information, including his identity and organization, prior to interviews;
2. Hiring someone to carry out intelligence gathering who does not first agree to comply with the ethical principles of the company;
3. Seeking to get a new employee to violate trade secret information obtained from a former employer;
4. Having unrealistic rules with respect to the gathering of competitive information that unnecessarily interfere with the people who need competitive information in order to do their jobs, thereby forcing them to gather information even if it means bypassing the established rules;
5. Some are breaking the rules; others know it and do nothing about it.
6. Appropriate and necessary rules are ignored and/or not enforced.

It is not surprising that in many cases an appropriate policy is established, but employees are not properly informed of its existence or its importance. For example, a recent survey demonstrated that only 40% of Europeans surveyed said that they had received any training on these guidelines, compared to 68% of their US counterparts.

Is there a good way for an ethical company to address these concerns? One interesting suggestion is that companies would do well to regularly interview and collect stories from sales people as well as their managers as to how competitive data is gathered at trade shows, in telephone interviews, or otherwise.

The stories should (a) be reviewed in carefully planned training sessions, and then (b) should be rated as being normal, aggressive, unethical or illegal. Having current and relevant information should then enable company attorneys and personnel to update and modify company rules and procedures to better address a potentially dangerous situation.¹

¹ Leonard Fuld, How Competitive Intelligence Rules Encourage Cheating, Harvard Business Review, December 20, 2010.