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Notes and explanations about the duty of confidentiality in connection with supervising externally based theses

Supervising externally based theses involves using information that is not known to the public. In addition to sharing technical information and data, this situation also requires an insight into internal domains of the industrial partner that are worth protecting for various reasons.

These notes and explanations about the duty of confidentiality in connection with supervising externally based theses serve to protect the company's interests while at the same time allowing university staff to fulfil the official duties involved in the examination process.

At the request of some industrial partners, I would like to expressly draw the attention of anyone supervising externally based theses to their obligation to maintain confidentiality in accordance with § 37 BeamtStG and § 3 Para. 2 TV-L, and to explain this obligation in more detail:

1. As a supervisor of externally based final theses, you are obliged to keep secret all information that constitutes a trade secret of the practice-based agency or that the practice-based agency does not directly or indirectly disclose to third parties, to not make it accessible to third parties, and also to not use it beyond what is necessary for the proper fulfilment of your official duties within the scope of the examination procedure.

“Confidential information” in this sense means, in particular, all technical and non-technical information, written documents, samples, films, processes, drafts, drawings, plans, specifications, trade secrets, business processes, methods, formulas, shared know-how as well as materials or other items that are expressly marked as confidential, or where the need for confidentiality results from their subject matter or other circumstances, whether shared or imparted in oral, visual or written form or via data storage media.

“Third parties” in this sense include, in particular, administrative staff, the thesis supervisor's colleagues, academic staff at Kempten University of Applied Sciences whose tasks and functions do not necessitate their involvement in the examination procedure, as well as external third parties. Second examiners, members of the examination board or the examination committee are not considered third parties in the aforementioned sense.

2. Thesis supervisors may, for their part, only disclose confidential information within their organisation to those persons who need to become aware of it during the course of the respective examination procedure.
Furthermore, thesis supervisors may neither pass on to libraries nor publish the confidential information made available to them.
3. University teachers may only make a judicial or extrajudicial statement or declaration about facts covered by the duty of confidentiality under § 37 para. 1 sentence 1 BeamtStG or § 3 para. 2 TV-L with the prior authorisation of their employer. In view of this, there is no need to conclude a confidentiality agreement between the supervising professor of a thesis and the industrial partner, nor is there any need for a declaration of commitment to confidentiality vis-à-vis the industrial partner.
The duty of confidentiality does not apply to the disclosure of confidential information on the basis of a binding official or judicial order or mandatory legal provisions; in which case, the disclosure must be made in such a way that confidentiality is maintained to the extent permitted by law.
4. Duty of confidentiality does not apply to information and data that
 - a) is already known, or becomes known, without the recipient being responsible for this;
 - b) was already lawfully known to the recipient without a duty of confidentiality prior to being disclosed;
 - c) has been developed by the recipient independently and without recourse to the information and data received from the student;
 - d) was lawfully disclosed to the recipient by a third party without a duty of confidentiality; and
 - e) insofar as the practice-based agency has given its written consent to disclosure or use in an individual case.

If the recipient cites reasons stated under point 4, they must provide evidence of this on the basis of written documents.

5. The confidential information and data supplied shall remain the property of the practice-based agency. Only the practice-based agency is entitled to register any industrial property rights inherent in the information.
6. With regard to the confidential information disclosed, the practice-based agency shall not assume any guarantee, warranty or liability; in particular, the practice-based agency shall not be responsible for damage of any kind suffered by the recipient or any other third party in reliance on the confidential information.

7. At the behest of the practice-based agency, the public is to be excluded from the viva voce foreseen in the programme and examination regulations, in which a selected topic from the final thesis is to be presented; the publication ban on the written part of the final thesis is to be extended to the oral element.

8. Finally, I would like to point out alternative solutions to publication bans. On the one hand, the confidential data could be anonymised, or the confidential figures could be altered. On the other hand, there is also the possibility of tailoring the topic of a final thesis in such a way that possibly secret contents or contents worthy of protection do not become public in the first place. It is also possible to protect just individual parts of the thesis, e.g. appendix with highly sensitive data. The supervisor of the externally based thesis should agree suitable measures with the supervisor in the company.

Kempton, 25 January 2022

[Signature on original document]

President