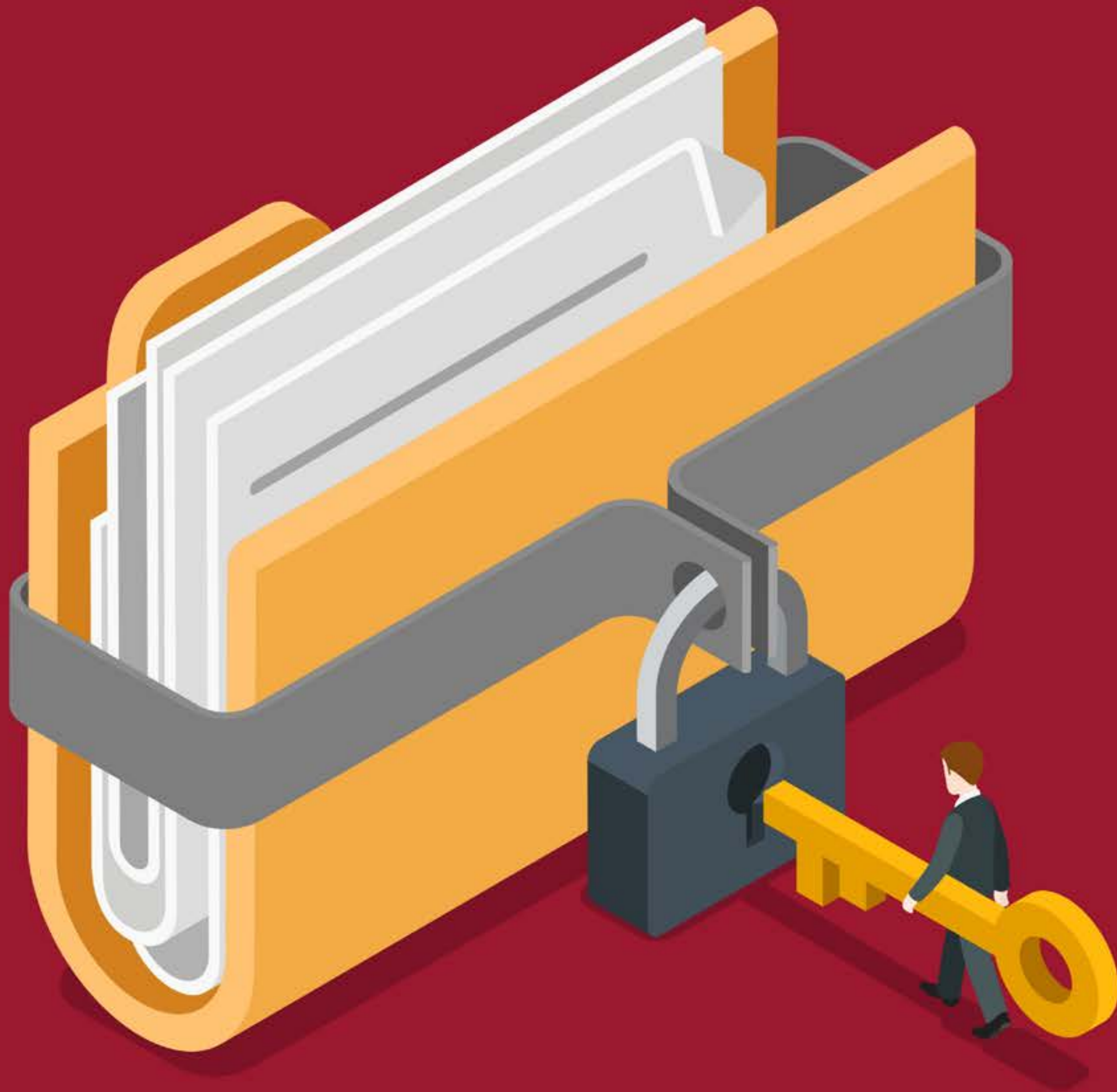


Objection!

February 2020

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**THE CRIME OF DISCLOSURE OF
INFORMATION AND DOCUMENTS
RELATING TO TRADE SECRET**



THE CRIME OF DISCLOSURE OF INFORMATION AND DOCUMENTS RELATING TO TRADE SECRET

With the rapid growth of the competition in terms of both economic and technological developments, the obligation to protect the information stored in companies has gradually become an important issue. In fact, Article 239 of the Turkish Penal Code sets forth a crime relating to the protection of such information and documents by stating as follows; “Any person who delivers or discloses information or documents relating to trade, banking or customer secrets which s/he holds by virtue of her/his title, duty, profession or trade, to an unauthorized person, shall be subject to imprisonment from one to three years and also be imposed a punitive fine up to five thousand days, upon complaint. In the event that such information or documents are delivered or disclosed to an unauthorized individual by a person who unlawfully acquired such information and document, such person shall be subject to a penalty in accordance with this paragraph.” As per other paragraphs of the relevant article, it is stated that the information related to scientific discoveries, inventions and also industrial practices are among the information to be protected within the scope of this article.

Which Information and Documents Regarded as Trade Secret?

First of all, in order for the crime to occur, the information or document delivered or disclosed must have the nature of a secret, in other words it must have the nature of a trade or customer secret. In this sense, the information in question should not be known by everyone or should be known by a limited number of people. In terms of trade secret, the relevant information has a commercial value and essentially provides the owner a competitive advantage over his competitors. While a company’s R&D information, cost and pricing information, customer lists or forward-looking strategic plans may be considered as a trade secret, information that has been already shared with public such as disclosed customer lists or certain information of the publicly held companies that must be disclosed, is out of this scope. As a matter of fact, the evaluation on whether the information is a trade secret often requires technical knowledge and experience, therefore such determination is made by experts.

In What Circumstances the Crime of Disclosure of the Information and Documents Relating to Trade Secret Occurs?

In order for the crime to occur, it is sufficient for the information or document in question to be delivered or disclosed to unauthorized persons. In this context, using this information for the benefit of another person or causing damage to the person whose information or document is disclosed, is not necessary for the crime to occur.

On the other hand, in terms of the crime in question, the perpetrator is a person who holds the trade secret by virtue of her/his title, duty, profession or trade. The most common scenario subject to this crime is that the employee of the company or institution copies or records such information or documents and uploads them to an electronic device that s/he can access whenever s/he wants, and discloses continuously the information in return for material benefit. Moreover, the disclosure of the information or documents within the scope of this crime by persons who unlawfully acquired them is also subject to punishment.

On the other hand, another controversial issue is whether a crime occurs if the employee of the company or institution uses such information and documents for his own benefit after acquiring them. For example, if a software developer working in a technology company, obtains the company's R&D information and then uses this information in her/his own company after quitting work, will it be the crime in question even if there is no disclosure? In such cases, the general view is that the crime does not occur in the sense of Article 239 of the Turkish Penal Code, since there is no act of delivering or disclosing to the unauthorized person, but it is possible to resolve the dispute within the scope of unfair competition. On the other hand, there are no uniform court practices regarding these situations.

Which Sanctions Are Imposed on the Crime?

According to the Turkish Penal Code, it is determined that the person who commits this crime shall be subject to imprisonment from one to three years and also be imposed a punitive fine up to five thousand days, upon complaint. Where such secrets are disclosed to non-citizens or his staff, the penalty for the perpetrator shall be increased by one third. In this case, no complaint is required. On the other hand, any person who, by use of force or threat, compels another to disclose information or documents within the scope of this article shall be subject to imprisonment of three to seven years.

Which Legal Actions Should Be Taken When Faced with the Crime of Disclosure of Trade Secrets?

As explained above, determining whether the information in question is a trade secret is absolutely necessary for the occurrence of the crime. Thus, it is very important to provide an opinion from experts regarding the content of this information. On the other hand, since the disclosure of such information is made especially with electronic devices, it is also recommended to follow the process with a professional lawyer in order not to disrupt the chain of evidence and not to harm the digital evidence.

Answers. Not theories.

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