How to Avoid Deal-Related Leaks—and What to Do When They Happen

For leaders of founder-owned companies, simply making the decision to sell or to bring in an outside investor can be anxiety inducing, but it's really just the beginning. The transaction process itself is often filled with apprehensive moments—arguably none more so than the potential of sensitive information leaking.

These leaks can be uncomfortable at best—and disruptive at worst. But they do happen, which is why company leaders should understand how to avoid them, how they might emerge, and how to handle them. Best practices dictate a strategic plan designed to ensure coordinated communications. Here's a quick primer.

Avoiding Leaks in the First Place

The best strategy for managing leaks is obviously simple—avoid them in the first place. Early in the process, company leaders and their advisors should take practical steps to reduce the likelihood of information getting into the wrong hands—unintentionally or intentionally.

That means ensuring the transaction team is as lean as possible and that all employees and advisors are subject to confidentiality agreements or similar obligations. Project code names should always be used, and access to sensitive process-related documents should be limited to a subset of employees who are "under the tent."

Too often, information is leaked in simple ways that are avoidable. Deal-related documents left in public office areas, sensitive meetings or calls taken in public settings, or the basic example of an email forwarded to the wrong contact—the list goes on and on.

Still, even company leaders who are proactive about process confidentiality might encounter a possible leak. On the next page, we highlight three common scenarios.

A Premier Advisor for Nearly Nine Decades

Since 1935, William Blair has guided owners of closely held businesses and their trusted advisors through monumental decisions. Our relationship-driven approach empowers owners to maximize the value of their businesses—and turn that capital into an enduring legacy. We invite you to contact us to discuss the ways we support and advise business owners and help our clients capitalize on the tremendous opportunities available to them today.

1.

Scenario 1:

Signs of a Possible Leak

Company leaders could face a situation where it's unclear whether a leak actually occurred. For instance, a reporter who hasn't heard anything (or anything solid) might reach out with questions that appear related to an ongoing transaction. The reporter could be "fishing" or simply inquiring in the course of his or her normal work.

In that situation, it's important not to comment on rumors or speculation, and to clearly explain to the reporter that the company does not do so as a matter of policy. However, the inquiry should be flagged to company leaders and subsequently to the deal team.

Depending on the seriousness of the inquiry, executives and their advisors should determine whether an immediate response or official statement is needed. And news sources and social media should be monitored in case anything goes public.

2.

Scenario 2:

When Signs of a Leak Are Clear

If a reporter's inquiry has reasonably accurate details, it's a sign that the reporter might have an informed source—and that the company might have a leak. Here again, company leaders should assess the situation, but with information potentially going public, these targeted questions are critical to consider:

1. What are the legal considerations of the information becoming public?
2. Who is the reporter, and does the reporter work for a reputable publication?
3. How much information does the reporter actually have—and is any of the information wrong?
4. Is there any indication regarding the reporter's source?
5. Is it better to stay silent or to make sure whatever goes public is accurate?

The answers can help determine whether there's an actual leak and whether it's worth it to issue a press release. Either way, companies should keep an eye out for similar inquiries and for related media coverage, which is more likely than in the first scenario. With the likelihood of news breaking, it's also important to prepare responses to potential questions from employees and other stakeholders (see chart **on the following page** for approaches to internal communications).

3.

Scenario 3:

If the Inquiry Signals Imminent Coverage

Sometimes, a reporter will reach out seeking confirmation or comment on an imminent story—meaning it's unlikely that a company's response will keep the news from going public. That means the stakes are highest.

Given the increased urgency, company leaders need to act swiftly. If deemed necessary—i.e., the information leaked includes terms of an offer—the deal team should contact appropriate counterparties and potentially seek their input on a company-issued press release. Also, the company should be prepared to issue a letter to employees and other stakeholders that mirrors what is released publicly.

It's important that those communications provide answers clearly and strategically—especially internal communications. Will there be layoffs? What will happen to existing customer relationships? What are next steps? These are the kinds of questions that, if answered effectively and early, can prevent company leaders from losing any control they might have on the narrative.

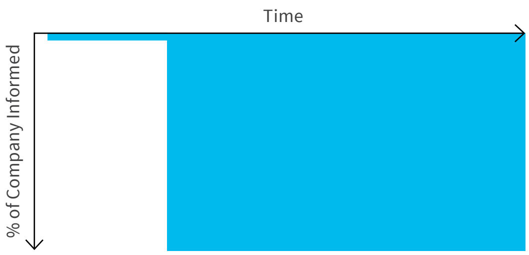
Of course, just as every transaction is different, every situation involving a potential leak is too. Therefore, as leaders of founder-owned businesses embark on this monumental journey, it's critical to avoid leaks while being prepared in case they happen.

Approaches for Internal Communications Surrounding a Transaction

Company leaders must map out the most effective way to communicate with employees. That means weighing considerations like timing, level of detail, parties involved, maintaining employee relationships, risks to the deal, and certainty of the transaction. Here are three approaches to consider.

1. Full Upfront

Inform all employees at the time a decision has been made to explore alternatives

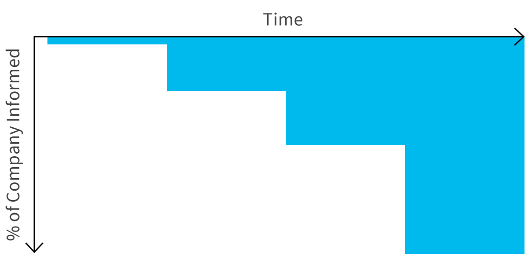


Pros
- Addresses potential “leak” issues later in process
- Allows for truthfulness with employees

Cons
- Possible employee turnover/distraction
- Customer, competitor, and/or supplier reaction

2. Staged Communication

Gradually inform incremental layers of management and employees

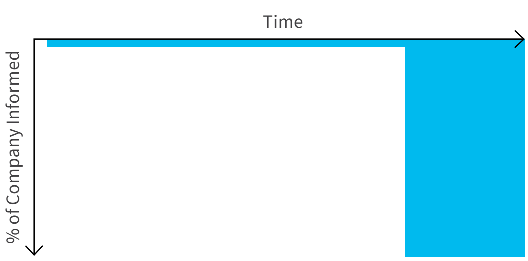


Pros
- Maintains confidentiality while still allowing most employees prior notification

Cons
- Possible employee turnover/distraction
- Complex and more difficult to control information flow once initial parties are informed

3. Late Stage

Inform all employees at the time a decision has been made to sign a purchase agreement



Pros
- Preserves maximum confidentiality
- Simplifies communication process

Cons
- Potential for rumors/ information leaks
- Catches employees by surprise

William Blair Founder-Owned Business Advisory Team:

Andrew Hansen
+1 312 364 5439
ahansen@williamblair.com

Sam Longenecker
+1 312 364 5237
slongenecker@williamblair.com