



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

July 15, 2011

Ms. Patricia C. Andrews  
7631 Reynolds Road  
Camby, IN 46113

*Re: Formal Complaint 11-FC-153; Alleged Violation of the Access to Public Records Act by the City of Indianapolis*

Dear Ms. Andrews:

This is in response to your formal complaint alleging the City of Indianapolis (“City”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* A copy of the City’s response to the complaint is enclosed for your reference. City Chief Deputy Corporation Counsel Andrea L. Brandes responded for the City.

## BACKGROUND

In your complaint, you allege that the City violated the APRA by withholding certain information from a Request for Qualifications (“RFQ”) concerning the development of a proposed parking garage (the “Project”). You requested information from the RFQ applicants regarding construction costs and operating expenses for the project, but the City denied you access to such information based on the trade secrets exception to the APRA. You argue that because one of the partners in the proposed project, Walker Parking Consultants (“Walker Parking”), published a study of the need for additional parking in the area of the Project. You argue that “[i]f that report did not violate the trade secrets statute, then I cannot see how the RFQ response can violate that statute.”

In response to your complaint, Ms. Brandes states that the RFQ submitted by Keystone Group, LLC (“Keystone”) specified that answers to certain questions regarding Keystone’s financials that “[f]inancials can and will be provided in a private and confidential manner.” After receiving your request, the City consulted with Keystone, which advised the City that its financials constitute trade secrets because they include a method or process of Project pricing and financing that derives independent economic value from not being generally known to or readily ascertainable by proper means by Keystone’s competitors. Keystone’s financials are also the subject of efforts which are reasonable under the circumstances to maintain their secrecy. The information and

financing strategy in Keystone’s financials is not publicly known, and Keystone takes steps to maintain the financials’ confidentiality by providing it in limited circumstances with an understanding that it will be maintained as confidential. According to Ms. Brandes, “The City has taken care to maintain its copies of the Financials, marked ‘Confidential,’ in a secure manner with restricted internal access.” With regard to the Walker Parking estimate, the City distinguishes between it and Keystone’s financials because the two are separate corporate entities and because the former was merely a general project estimate of projected costs prepared by Walker Parking in 2007 prior to its engagement as a Project partner and prior to the City’s issuance of the RFQ.

## ANALYSIS

The public policy of the APRA states, “[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. The City is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Certain categories of information is confidential under the APRA and may not be disclosed unless a court, state statute, or federal statute requires otherwise. *See* I.C. § 5-14-3-4(a). One such category listed in the APRA is “[r]ecords containing trade secrets.” I.C. § 5-14-3-4(a)(4). The APRA prescribes criminal penalties for public employees and officials who knowingly or intentionally disclose confidential information. I.C. § 5-14-3-10(a).

The City claims that it withheld trade secrets from the Keystone RFQ pursuant to I.C. § 5-14-3-4(a)(4), which is the exception requiring public agencies to maintain as confidential “[r]ecords containing trade secrets.” I.C. § 5-14-3-4(a)(4). In Ind. Code § 5-14-3-2(o), the APRA defines a “trade secret” as having the meaning set forth in the Uniform Trade Secrets Act, I.C. § 24-2-3-2)(c):

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Even after the 1982 enactment of the Indiana Uniform Trade Secrets Act, courts have noted that what constitutes trade secret information is not always clear. *See, e.g., Franke v. Honeywell, Inc.*, 516 N.E.2d 1090, 1093 (Ind. Ct. App. 1987), *trans. denied*. Courts determine whether or not something is a trade secret as a matter of law. *Id.* “The threshold factors to be considered are the extent to which the information is known by

others and the ease by which the information could be duplicated by legitimate means.” *Id.* “Information alleged to be a trade secret that cannot be duplicated or acquired absent a substantial investment of time, expense or effort may meet the ‘not readily ascertainable’ component of a trade secret under the Act.” *Id.*, citing *Amoco Product. Co. v. Laird*, 622 N.E.2d 912, 919 (Ind. 1993). For example, Indiana courts have afforded trade secret status to a compilation of documents that included customer contact information, manufacturing costs, blueprints and price summaries, as well as a customer list of names not able to be created by means outside the business operations of the list owner. See *Infinity Products, Inc. v. Quandt*, 810 N.E.2d 1028, 1032 (Ind. 2004), *trans. denied*; *Kozuch v. CRA-MAR Video Center, Inc.*, 478 N.E.2d 110, 113-14 (Ind. Ct. App. 1985), *trans. denied*.

Based on the City’s response, the financial information concerning Project financing and pricing that the City redacted is “information [that] derives independent economic value, actual or potential, from not being generally known” to Keystone’s competitors and other entities in the industry that could obtain economic value from its disclosure. I.C. § 24-2-3-2(c)(1). Project pricing and financials is the type of information that has been ruled a trade secret by Indiana courts. See, e.g., *Infinity Products, Inc.*, 810 N.E.2d at 1032 (manufacturing costs, blueprints and price summaries). Further, it appears that Keystone takes reasonable steps to protect and maintain the confidentiality of such information, such as by providing it to the City with the understanding that it will be maintained as private and confidential. Thus, it appears to be “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” I.C. § 24-2-3-2(c)(2). Based on this information, the withheld financial information appears to fall within the definition of a trade secret under I.C. § 24-2-3-2(c). Because the APRA classifies as confidential “[r]ecords containing trade secrets,” I.C. § 5-14-3-4(a)(4), the City did not violate the APRA by refusing to disclose it.

## CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Andrea L. Brandes