



# STATE OF INDIANA

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January 2, 2014

Mr. David R. Hunn  
900 N. Tucker Blvd.  
St. Louis, MO 63101

*Re: Formal Complaint 13-FC-337; Alleged Violation of the Access to Public Records Act by Visit Indy, the Indianapolis Convention and Visitors Association*

Dear Mr. Hunn,

This advisory opinion is in response to your formal complaint alleging Visit Indy, the Indianapolis Convention and Visitors Association ("Visit Indy") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City responded to your complaint via Mr. Mark J. Crandley, Visit Indy Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 9, 2013. Your request has not been granted priority status, as it does not meet the criteria found at 62 IAC 1-1-3.

## **BACKGROUND**

Your complaint alleges Visit Indy, the Indianapolis Convention and Visitors Association violated the Access to Public Records Act by denying producing records responsive to your request.

On October 16, 2013 and again on December 2, 2013, you submitted to Visit Indy a request for documentation relating to Visit Indy's bid for the 2015-2017 Robotics Championship convention. Visit Indy denied your request arguing the information was not subject to disclosure because of Visit Indy's status as an economic development organization; the information contained trade secrets and; the information includes confidential financial information. These arguments were also raised in Visit Indy's response to your formal complaint and will be discussed individually below.

## ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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.” See Ind. Code § 5-14-3-1. Visit Indy, the Indianapolis Convention and Visitors Association is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy Visit Indy’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Visit Indy holds itself out to be the official marketing arm of the City of Indianapolis and therefore, they are a public agency subject to APRA. They are also a local economic development organization defined in Ind. Code § 5-28-11-2(3) as:

A nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana.

Generally, negotiation records of a local development organization are exempted from disclosure. See Ind. Code § 5-14-3-4(b)(5)(A).<sup>1</sup> Therefore, the release of the bid information is left to the discretion of Visit Indy. It matters not that negotiations had concluded; the release of any record created during the course of negotiations is discretionary in perpetuity.

Visit Indy is justified in withholding negotiation records on the grounds they are a local development organization; however, they also contend the information seeks trade secrets and confidential financial information. I will speak to those matters for educational purposes.

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<sup>1</sup> Please note that Ind. Code § 5-14-3-4(b)(5)(B) mandates disclosure of the “final offer” of most economic development corporations, but specifically omits “local economic development organizations” in subsection B of the statute. Visit Indy would not have to disclose the final offer of a bidding process.

Trade secrets are excluded from disclosure under Ind. Code § 5-14-3-4(a)(4). Trade secrets are defined under Ind. Code § 24-2-3-2 as:

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.

As Visit Indy is a competitive bidder for various events and conventions against other similarly situated City organizations, it can be reasonably concluded the information included in a bid would potentially compromise future negotiations. The mere fact that Visit Indy is a public agency does not preclude them from identifying certain propriety information as a trade secret.

Similarly, Visit Indy presumably compiles confidential information from other non-public entities in order to compile a competitive bid. The APRA excludes the disclosure of confidential financial information in Ind. Code § 5-14-3-4(a)(5). If confidential financial information were to be released by a public agency during or after a negotiation process, individuals and businesses would be hesitant to provide that information and consequently would compromise the competitive bidding process for public agencies.

If Visit Indy were not specifically excluded from Ind. Code § 5-14-3-4(b)(5)(B), all other information in the final offer would need to be disclosed while redacting trade secrets and confidential financial information.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor Visit Indy, the Indianapolis Convention and Visitors Association did not violate the Access to Public Records Act by denying the release of negotiation material.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mr. Mark J. Crandley, Esq.