



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

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)

January 23, 2015

Mr. Mark Alesia  
C/o The Indianapolis Star  
130 S. Meridian St.  
Indianapolis, IN 46204

*Re: Formal Complaint 14-FC-301; Alleged Violation(s) of the Indiana Access to Public Records Act by the Capital Improvement Board of Managers of Marion County*

Dear Mr. Alesia,

This advisory opinion is in response to your formal complaint alleging the Capital Improvement Board of Managers of Marion County ("CIB"), violated the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The CIB has responded via Counsel, Philip A. Sicuso, Esq. 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 8, 2014.

## **BACKGROUND**

Your formal complaint dated December 8, 2014, alleges the Capital Improvement Board violated the public records act by not releasing records to you in a timely manner.

On or about September 12, 2014, you submitted a public records request to the CIB seeking, amongst other documents:

Any and all information provided to the Indianapolis Colts since July 1, 2010, regarding 'electronic ticket scanning' data as described in Section 6.4 of the Lease Agreement between the CIB/City of Indianapolis and the Indianapolis Colts ("Lease Agreement")

The CIB responded on November 20, 2014 and denied your request claiming the Indianapolis Colts ("Colts") considered the data to be trade secrets and not subject to disclosure.

At my request, the CIB obtained a statement from the Colts outlining its argument as to why the data was considered to be a trade secret. The Colts responded via counsel arguing that the data is inextricably linked to the ticket holder's confidential financial information. The Colts also argue that the data is used by the organization to "evaluate attendance patterns, ticket pricing, fan demographics, marketing strategies, and a host of other business planning purposes." This information is closely held by the Colts organization and is protected internally as a trade secret. Although the scanning of tickets is effectuated by CIB employees or contractors, the data is never received by the CIB.

## ANALYSIS

The public policy of the APRA states that "(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." See Ind. Code § 5-14-3-1. The Capital Improvement Board 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 the CIB'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).

Ind. Code § 5-14-3-4(a)(4) prohibits the disclosure of trade secrets by a public agency pursuant to a public records request unless compelled to do so by a court of law. Under 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, Ind. Code § 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.

Although the CIB is the conduit of which the data is collected (pursuant to the Lucas Oil Stadium Lease agreement), the raw data is held by the Colts as a trade secret. The data is used for a host of business purposes intended to leverage an advantageous position over other entertainment venues and outlets. The Colts have entered into confidentiality agreements with its partners to protect the data as well. It is my opinion the Colts and thusly the CIB has satisfied its burden to demonstrate the data is propriety and a trade secret.

Furthermore, the Access to Public Records Act declares confidential financial information to be non-disclosable. See Ind. Code § 5-14-3-4(a)(5). The Colts claim the

data is linked to ticketholders' credit card numbers or other methods of payment. This information is tracked and used for marketing purposes. Disclosure of this information would subject the CIB to potential civil and criminal liability. In addition to being a trade secret, the data should not be disclosed for this reason as well.

### CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Capital Improvement Board of Managers of Marion County did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Philip A. Sicuso, Esq.