

August 8, 2003

Mr. Mark Alesia
Indianapolis Star Sports Department
307 N. Pennsylvania
Indianapolis, IN 46206

Re: Advisory Opinion 03-FC-56; Alleged Denial of Access to Public Records by Purdue University

Dear Mr. Alesia:

This is in response to your formal complaint, which was received on July 10, 2003. You have alleged that Purdue University ("Purdue") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that you were wrongfully denied access to copies of statements of athletically-related income required to be submitted to Purdue according to by Bylaw 11.2.2 of the 2002-03 NCAA Division 1 Manual. Ms. Lucia Anderson, Public Records Officer and Director, Business Manager for Purdue, responded in writing to your complaint. A copy of her complaint is enclosed for her reference. It is my opinion that it is not a violation of the APRA for Purdue to refuse, pursuant to Indiana Code section 5-14-3-4(a)(5), to provide access to confidential financial information obtained from Purdue basketball coach Gene Keady and football coach Joe Tiller.

BACKGROUND

According to your complaint, on June 26, 2003 you wrote a letter to Ms. Anderson requesting copies of current employment contracts and statements of athletically-related income required to be submitted to Purdue by Bylaw 11.2.2 of the 2002-03 NCAA Division 1 Manual for Purdue basketball coach Gene Keady and football coach Joe Tiller. In a letter dated June 26, 2003, Ms. Anderson advised that the contracts you requested were enclosed. However, Ms. Anderson denied your request for the statements of athletically-related income pursuant to Indiana Code section 5-14-3-4(a)(5). You then filed your complaint with this Office

In her response to this Office, Ms. Anderson advised that it is the position of Purdue that the reports of athletically related income falls squarely within a category of records which are excepted from disclosure. She cited to Indiana Code section 5-14-3-4(a)(5) as the statutory authority for withholding the records in question.

ANALYSIS

The public policy of the APRA states that "[p]roviding person with information is an essential function of a representative government an integral part of the routine dues of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Purdue is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, anyone has the right to inspect and copy the public records of Purdue during regular business hours unless the public records are exempted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

One exception to disclosure, Indiana Code section 5-14-3-4(a)(5) provides that a public agency may not disclose records, except by court order or if required to do so by state or federal statute, that are "confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute." Since there is no Indiana case law interpreting Indiana Code section 5-14-3-4(a)(5), we must rely upon the rules of statutory construction in order to ascertain the General Assembly's intent in adopting this provision.

When construing a statute, we seek to ascertain and give effect to the intention of the legislature as expressed in the statute. In so doing, the objects and purpose of the statute in question must be considered as well as the effect and consequences of such interpretation. We presume words appearing in the statute were intended to have meaning, and we endeavor to give those words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise.

Johnson v. State, 721 N.E. 2d 327, 332 (Ind. App. 1999). [Citations omitted.]

The APRA provides that "confidential financial information" obtained by a public agency upon request may not be disclosed by the public agency. Ind. Code § 5-14-3-4(a)(5). The word "confidential" is defined as "imparted in confidence, secret." *New Illustrated Webster's Dictionary* 211(1992). "Financial" is defined as "of or relating to finance." *Id.* at 364. Therefore, "confidential financial information" means information that is secret relating to finance.

Along with the rules of statutory interpretation Indiana courts have also relied upon case law from other jurisdictions interpreting similar provisions to assist them in interpreting Indiana statutes. Here, federal case law is particularly important because a similar provision to the Indiana provision is found in the federal Freedom of Information Act ("FOIA"). FOIA provides that generally information is disclosable, however, certain information is exempt from disclosure. Of particular importance in this case is the provision exempting from disclosure "trade secrets and commercial or *financial information obtained from a person and privileged or confidential.*" 5 U.S.C. § 552(b)(4). In interpreting the FOIA provision numerous federal courts have stated that in order to bring a matter within the financial information exemption under that statute it must be shown that the information is (1) financial, (2) obtained from a person, and (3) privileged or confidential. *See generally, National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (C.A.D.C. 1974).¹ Furthermore, in McDonnell Douglas

Corp. v. National Aeronautics & Space Admin., the District Court for the District of Columbia stated that financial information provided to the government voluntarily is exempt from disclosure if it is the kind of information that would not customarily be released to the public by the person from whom it was obtained. 895 F. Supp. 316 (D.D.C. 1995). Finally, the Florida District Court provided that whether the disclosure of the information would significantly aid the public agency in performing its function, whether there would be harm to the public generally, and whether there are other alternatives to releasing all of the information should be considered in determining whether to release the information. *Doctors Hospital of Sarasota, Inc. v. Califano*, 455 F. Supp. 476 (M.D. Fla. 1978). It is my opinion, therefore, that financial information that the submitting person would not customarily release to the public may be withheld from disclosure by Purdue pursuant to Indiana Code section 5-14-3-4(a)(5). It is my opinion that the athletically related income is financial information. Consequently, it is my opinion that if the coaches do not customarily release the information to the public or the information is not readily accessible from other sources then Purdue may not release the information requested. However, any information that is generally released to the public or readily available to the public should have been released upon request. Additionally, if applicable, Purdue has an obligation to separate disclosable and nondisclosable information and release the disclosable information.

CONCLUSION

In conclusion, it is my opinion that Purdue University is not obligated to release the statement of athletically related income if that information is not customarily released by the coaches or is not readily available from other sources. However, any information that is generally released to the public or readily available to the public should have been released upon request. Additionally, it is my opinion that Purdue has an obligation to separate disclosable and nondisclosable information and release any disclosable information that satisfies your public records request.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Lucia Anderson, Purdue University

¹ See also, *Continental Oil Co. v. Federal Power Commission*, 519 F.2d 31 (C.A. TX 1975), certiorar denied 425 U.S. 971; *Burroughs Corp. v. Schlesinger*, 403 F. Supp 633 (D.C.Va. 1975); *Petkas v. Staats*, 364 F. Supp. 680 (D.C.D.C 1973), reversed on other grounds 501 F.2d 887.