

November 18, 1999

Mr. C. Charles Murray
Datalister, Inc.
Box 1751
Lakeland, Florida 33802

Re: PAC Opinion 99-FC-10; Workers Compensation Board Proof of Coverage Database and the Trade Secret exception to disclosure under the Access to Public Records Act, Indiana Code 5-14-3-4(a)(4).

Dear Mr. Murray:

This is in response to your formal complaint, which was received October 20, 1999. You have asked whether expiration dates of contracts of worker's compensation insurance that are maintained in the Indiana Workers Compensation Board's (hereinafter, "Board's,") proof-of-coverage database should have been disclosed upon your request for access to this information. The Board responded to your complaint in a letter from its Chairman, Mr. G. Terrence Coriden. The insurance providers have notified the Board that this information is confidential under the trade secret exception to the Access to Public Records Act ("APRA"), specifically, Indiana Code section 5-14-3-4(a)(4), but the Board will comply with the advisory opinion issued in response to your complaint. For the reasons stated below, it is my opinion that expiration dates of workers compensation insurance contracts that are maintained as part of the Board's proof-of-coverage database are not "trade secrets" under Indiana Code section 5-14-3-4(a)(4), and therefore, should have been disclosed upon request.

BACKGROUND

According to the information provided in your complaint and copies of correspondence between yourself and the Board, you made at least ten requests for access to information from the Board's proof-of-coverage database between November, 1998 and July, 1999. The Board provided most of the information on a disk to you earlier this year, but failed to provide the expiration dates for contracts listed in the database.¹ You continued to contact the Board concerning this information and did not receive the expiration dates information as of the filing of your formal complaint with this Office.

In its response, the Board has noted that it is a repository for information under Indiana Code section 22-3-5-2. The Board maintains information concerning expiration dates of insurance contracts for hundreds of thousands of employers in Indiana. Representatives of the insurance

industry have contacted the Board claiming that the information in the database, specifically, expiration dates of policies held by employers, are confidential as a "trade secrets" of its companies under Indiana Code section 5-14-3-4(a)(4).² You and your company, Datalister, Inc., have provided the Board with letters stating that your opinion is that the information is not confidential. The Board has indicated that it will disclose or not disclose the expiration date information in accordance with this opinion.

ANALYSIS

There is no question that the Board is subject to the provisions of the Access to Public Records Act (hereinafter, "APRA.") "It is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government." Ind. Code rc 5-14-3-1. Further, the Indiana General Assembly has provided that the APRA is to be liberally construed in favor of this policy and the burden of proof for nondisclosure of a public record lies with the public agency, not the person seeking access to the public record. Id.

A public record is defined to include any information, in whatever form, that is filed with, created, received or maintained by a public agency. Ind. Code rc 5-14-3-2. Public records are to be available for copying and inspection unless the public record is confidential under Indiana Code subsection 5-14-3-4(a) or nondisclosable at the agency's discretion under Indiana Code subsection 5-14-3-4(b)³. The knowing or intentional disclosure of confidential information by a public agency through its officials or employees is a Class A misdemeanor under the APRA. Ind. Code rc 5-14-3-10.

The Indiana General Assembly has provided the Board with the responsibility of collecting and maintaining information from employers as to worker's compensation insurance coverage. Under Indiana Code section 22-3-5-2, employers who are required to carry worker's compensation insurance must file with the Board, "within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance" with the requirement that they carry such insurance. The information provided to the Board, including the expiration date of worker's compensation insurance policies is the proof-of-coverage database and this information is a public record as defined under the APRA.

The question is, therefore, whether the expiration dates in the proof-of-coverage database constitute trade secrets that are confidential public records under Indiana law. A "trade secret" for the purposes of the APRA has "the meaning set forth in IC 24-2-3-2," the Indiana Uniform Trade Secrets Act (IUTSA. Ind. Code rc 5-14-3-2.

"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.

A trade secret that may be protected under the IUTSA has four key characteristics:

1. it is information
2. which derives independent economic value
3. that is not generally known, or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and
4. it is the subject of efforts reasonable under the circumstances to maintain its secrecy.

Ackerman v. Kimball International, Inc., 634 N.E.2d 778, 783 (Ind. App. 1994), *vacated in part, adopted in part*, 652 N.E.2d 507 (Ind. 1995).

The Indiana Court of Appeals has directly addressed the question of whether the expiration dates of insurance policies are trade secrets under Indiana law. In *Harvest Life Insurance Company v. Getche*, the Indiana Court of Appeals considered the issue of whether customer information from insurance policyholder lists are trade secrets, recognizing that the determination of whether customer information is a trade secret is a fact-sensitive question. 701 N.E.2d 871, 876 (1998). The Court of Appeals reviewed a number of Indiana cases and found that

where the information in question is a policyholder list of an insurance company that information, which can include names of customers, policy coverage, premium amounts, and expiration dates, is not a trade secret.

701 N.E.2d at 876 (Citations omitted.) The Court of Appeals noted in the cases reviewed that the information in question could be obtained from the policyholder, the policy itself or other materials provided by the insurance company. *Id.*

In conclusion, there is no question that the Board is subject to the APRA and that the APRA is to be construed liberally in favor of disclosure. Expiration date information for worker's compensation insurance contracts is not a trade secret of the insurance providers and it is not otherwise nondisclosable under the APRA or any other statute. It is my opinion, therefore, that the Board must disclose expiration date information from its proof-of-coverage database.

CONCLUSION

It is my opinion that expiration dates of insurance contracts that is received and maintained in the Indiana Worker's Compensation Board's proof-of-coverage database is not a "trade secret" of the insurance providers under Indiana Code section 5-14-3-4(a)(4). This information, therefore, must be disclosed upon request under the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

cc: Mr. G. Terrence Coriden, Chairman
Indiana Workers Compensation Board

¹ The Board is willing to produce this information on diskette; the only question is whether the expiration date information will be provided to supplement information previously provided on disk.

² Letters from American Insurance Association and CNA were attached to the Board's written response of November 5, 1999.

³ There has been no claim that any of the discretionary exceptions would be applicable to this situation. Since the Board will disclose if advised to, the discretionary exceptions will not be considered as part of this Opinion.