



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

July 21, 2015

Mr. Patrick McDonald
Via email

*Re: Informal Inquiry 15-INF-15; Informal Opinion regarding
Confidentiality of Building Plans, Town of Long Beach, Indiana*

Dear Mr. McDonald,

You requested an informal opinion on an Access to Public Access question regarding a person who requested “any and all information” on three new homes being built in the Town of Long Beach, Indiana (“Town”). These records are received and maintained by the Town for the purposes of issuing permits, etc. You expressed concern about providing information about the inside of the homes and asked for an informal opinion about how to approach the issue.

To aid in the determination, you provide several facts.

1. That these homes are intended to be custom-made and that the drawings have been copyrighted by the contractor.
2. Included in these drawings are locations of security systems, safes, electrical equipment, etc.
3. The contractor views the drawings as trade secrets

Ind. Code §5-14-3-4 does not make an exception of the release of public records with technical information which would compromise residential security systems. Similarly, records which include information concerning electrical equipment are not exempt, unless it would compromise the utility’s electrical infrastructure.

However, Ind. Code §5-14-3-4(a)(4) does exempt records that are considered trade secrets. A similar consideration was made in a previous *Opinion of the Public Access Counselor 13-FC-49*, which is incorporated into this opinion.

Ind. Code § 5-14-3-2(q) defines a “trade secret” as having the meaning set forth in Ind. Code § 24-2-3-2:



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

“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.

The contractor may be able to derive value from the plans because the contractor is marketing itself as providing unique custom homes. However, the question is whether the home, and the building plans themselves, are so unique that another contractor would be able to profit from having those plans. If another contractor cannot profit from those plans, then it cannot be considered a trade secret. If, for example, a public agency were to maintain floor plans from a non-custom builder of a tract development, those plans would not be unique to the point of being a trade secret. Any member of the public or a rival developer could view those plans in a model home.

In this situation, it does appear the plans could be considered trade secrets. Indiana courts have afforded trade secret status to documents that included customer blueprints. *See Infinity Products, Inc. v. Quandt*, 810 N.E.2d 1028, 1032 (Ind. 2004), *trans. Denied*.

Ind. Code 5-14-3-4(a) states that an agency may not disclose records declared confidential by state statute or required to be kept confidential by federal law unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. Under this exemption, copyrighted plans are generally non-discloseable under the APRA. However, it should be noted that a public entity cannot copyright a document to prevent disclosure.

After several conversations with the requestor (see also *Opinion of the Public Access Counselor 15-FC-197*), I have determined the information he is seeking is information which would not be considered a trade secret, i.e. the exterior of the home, elevation, lot size, etc. Only the interior plans of the home would be considered to fall into an exception to disclosure. My anticipation and hope is that the requestor will be satisfied with the exterior plans, as that is the subject of his curiosity. The exterior plans, drawings and elevations should be released to him as soon as possible.



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

Best regards,

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

Luke H. Britt
Public Access Counselor