

October 27, 2005

Susan Gard
General Counsel
Indiana Department of Administration
402 West Washington Street, W479
Indianapolis, IN 46204

Re: Informal Inquiry Response; Partial Redaction of Entity Identification Numbers

Dear Susan:

You have requested an informal opinion from the Office of the Public Access Counselor. Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your request.

Specifically, you have asked whether there is a violation of the Access to Public Records Act if the Department of Administration (“Department”) redacts an entity identification number (EIN) from a record submitted to the Department. The Department would like to implement a system to keep a social security number of an individual from disclosure. A systematic means of protecting social security numbers is needed because procurement files, once a contract is awarded, are routinely requested and disclosed by the Department. The Department proposes to begin now to redact social security numbers of individuals.

However, some of the documentation maintained by the Department contain nine digit numbers that the Department may not be able to determine, or determine easily, whether the number represents an individual’s social security number, or an EIN. Therefore, you have sought guidance of the public access counselor to assess the risk of redacting part or all of a number that is actually an EIN, when the Department believed it was a social security number of an individual or was unsure. The aim of the Department is to not release a social security number inadvertently. The Department proposes to white out the number or to obliterate the number permanently.

Social security numbers of an individual contained in the records of a public agency are confidential, pursuant to Ind. Code 5-14-3-4(a)(12). This provision was part of a 2005 law that

became effective on July 1, 2005. HEA 1073; P.L. 210-2005. A different 2005 bill, SEA 503, which is effective on July 1, 2006, prohibits disclosure of a social security number by a state agency. P.L. 91-2005; IC 4-1-10. For purposes of P.L. 91-2005, disclosure of the last four digits of an individual's social security number is not a disclosure of the individual's social security number. IC 4-1-10-3(a). A state agency complies with section 3 of IC 4-1-10 (prohibiting disclosure of a social security number) if the agency removes or completely and permanently obscures a social security number on a public record before disclosing the public record. IC 4-1-10-6.

To my knowledge, no law prohibits the disclosure of an EIN. An EIN is a nine-digit number assigned to sole proprietors, corporations, partnerships, and other entities for tax filing and reporting purposes. *Internal Revenue Services IRS.gov*. Social security numbers are also nine-digit numbers. Although sole proprietors and single-owner LLCs may obtain an EIN, the Internal Revenue Service encourages a sole proprietor to furnish that person's social security number on the W-9 form. See page 4 of the W-9. This form is often among the records that the Department maintains in the procurement file. The W-9 form contains discrete spaces for EIN and social security numbers.

Any person may inspect and copy a public record of a public agency unless it is excepted from disclosure under IC 5-14-3-4. IC 5-14-3-3(a). Therefore, unless a record is confidential or nondisclosable at the discretion of the agency, it must be disclosed. A public agency shall protect public records from loss, *alteration, mutilation*, or destruction. IC 5-14-3-7(a). Also, a public agency shall take precautions that protect the contents of a public record from unauthorized enhanced access, unauthorized access by an electronic device, or alteration. IC 5-14-3-7(b). Notwithstanding subsection (d) and section 7 of IC 5-14-3, public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. IC 5-14-3-4(e).

Records subject to IC 5-15 are documentation of the informational, communicative or decisionmaking processes of state government, its agencies and subdivisions made or received by any agency of state government or its employees in connection with the transaction of public business or government functions, which documentation is created, received, retained, maintained, or filed by that agency as evidence of its activities or because of the informational value of the data in the documentation. IC 5-15-5.1-1 (defining "record").

Given the above authorities, it is my opinion that the Department may not alter or mutilate a part of a record containing an EIN, because no law authorizes the altering or permanent removal of an EIN in the records of the Department. In my view, the prohibition on alteration or mutilation of records in IC 5-14-3-7(a) is not confined to only third parties viewing original records of the agency, because IC 5-14-3-4(e) contains "notwithstanding" language that suggests that the public agency itself is also prohibited from destroying, mutilating, or altering its own public records. Of course, it would be a strained interpretation of IC 5-14-3-7(a) to assume that an alteration such as adding a control number to a document filed with the agency, or stamping a document "received" by the agency is not permitted. However, the alteration that the Department proposes, to obliterate permanently a number on the original of a record maintained

by the agency, in my view, falls within the prohibition of IC 5-14-3-7(a), unless such alteration is authorized by applicable law.

Hence, the question is whether the Department is authorized by other applicable law to permanently obliterate the nine-digit number that appears on the records of the procurement maintained by the Department. Although P.L. 91-2005 is not effective until July 1, 2006, it appears to contemplate that an agency could remove or permanently obscure a social security number on a public record before disclosing the public record. Also, IC 5-14-3-4(a)(12), in effect now, prohibits any public agency, including the Department, from disclosing a social security number. However, these authorities permit removal of only an individual's social security number from the records, not an EIN. To the extent that the Department permanently removes or obscures an EIN, it is not authorized to do so, and would be altering a record in violation of IC 5-14-3-7(a).

Although I am sympathetic to the need for a systematic way to find and remove social security numbers from voluminous files, I issue a caution to the Department that it may only remove social security numbers from the records. An EIN is not a nondisclosable part of a record. I suggest that the Department determine a means of removing only social security numbers, and when there is doubt whether a nine-digit number is an individual's social security number or an EIN, develop a way of removing the EIN temporarily (such as on a copy of the original record) so that when a record is actually requested, the file clerk does not inadvertently disclose a social security number, but can disclose the EIN once it is determined that the record contains an EIN, not a social security number.

Please feel free to contact me if you have any questions.

Sincerely,

Karen Davis
Public Access Counselor

cc: April Schultheis