

November 9, 2004

Ms. Rita Kopala  
66559 Ivy Road  
Lakeville, IN 46536

*Re: Your Informal Inquiry Request*

Dear Ms. Kopala:

This is in response to your request for an opinion regarding whether the State Board of Accounts may ask you to sign a verification that you will not use a list of names and addresses of public employees for commercial purposes.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency. IC 5-14-3-3(a). There are special provisions within the Access to Public Records Act ("APRA") with respect to lists of names and addresses. Under APRA, a list of names and addresses of employees of a public agency may not be disclosed by a public agency to commercial entities for commercial purposes. IC 5-14-3-3(f)(1).

You have requested from the State Board of Accounts the Certified Report of Names, Addresses, Duties and Compensation of Public Employees (Form 100R) for the office of the St. Joseph County Surveyor for the years 1993 to 2003. This record contains names and addresses of public employees, and is therefore governed by IC 5-14-3-3(f)(1). It may not be disclosed to a commercial entity for commercial purposes.

I spoke with Charles Johnson, the State Examiner for the State Board of Accounts. He indicated that every person who requests this record or any other record that is a list of names and addresses of public employees must sign a certification that the list will not be used for commercial purposes. "Commercial entity" is not defined in APRA. It would be difficult for an agency to determine whether the person requesting a list is or is not representing a commercial entity. Hence, in order to ensure that the agency is not violating the law, it requests that everyone sign a certification stating that the person will not use the list for commercial purposes, thereby

protecting the agency in the event that a person appearing to be an individual but actually representing a commercial entity does not use the list for commercial purposes.

I do not view as an impediment or interference with your right to records the State Board of Account's use of a certification to ascertain that it may disclose the list of names and addresses. Under IC 5-14-3-3(a), no request for records may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. Here, the agency is not denying you the record because you refuse to state the purpose for your request; rather, it is merely documenting that you are not using the record for a purpose that, under state law, would require the agency to deny the record. This appears to be a permissible balance by the agency of your right to a record with its obligation not to disclose the record under certain circumstances. Also, I have reviewed the certification, and it is narrowly tailored to meet the agency's need to comply with the law regarding denial of disclosure of lists of names and addresses of public employees. In other words, the certification doesn't require more information from the person requesting the record than the agency needs. Also, it is used uniformly. Therefore, I find that the agency has not violated any provision of the Access to Public Records Act by requesting that you sign the certification.

Please feel free to contact me in the event that you have any questions.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Charles Johnson