

February 25, 2008

Melissa Binetti
Indiana, Illinois, Iowa Foundation for Fair Contracting
6170 Joliet Road; Suite 200
Countryside, Illinois 60525

Re: Formal Complaint 08-FC-45; Alleged Violation of the Access to Public Records Act by Indiana University

Dear Ms. Binetti:

This advisory opinion is in response to your formal complaint alleging Indiana University (“University”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the University’s response to your complaint for your reference. It is my opinion the University has not violated the APRA.

BACKGROUND

You allege that you submitted a request to the University dated November 13, 2007, seeking a copy of the certified payrolls submitted by any contractors working on the University’s Student Housing and Community Building at South Bend (Project #20063567). The University responded by letter dated December 7, indicating that the University is not required to collect certified payrolls and does not by contract require contractors to submit certified payrolls. The University further indicated that if it were to obtain certified payrolls, the records would be exempt from disclosure based on I.C. § 5-14-3-4(a)(5), which prohibits an agency from disclosing confidential financial information obtained upon request from a person. The University further contends it is prohibited from releasing the Social Security numbers of individuals.

You submitted a subsequent request to the University dated December 19. You requested the University reconsider its determination, and you indicated your belief that the University maintains at least two certified payrolls, as evidenced by an August 13, 2007 letter from Kiply Suzanne Drew of the University to an individual who had requested records under the APRA. The University sent you a letter dated January 7, 2008, again denying your request based on the reasons set forth in its December 7 letter.

You filed this complaint on January 25, 2008. You allege that the University has denied you access to certified payrolls related to the indicated project. You contend that the information contained in the payrolls is not confidential financial information, as the schedule for a public work project is determined by committee, at a public meeting, under the common construction wage law.

The University responded to your complaint by letter dated February 11 from Ms. Drew. The University contends the certified payrolls are excepted from disclosure pursuant to I.C. § 5-14-3-4(a)(5), which excepts from disclosure confidential financial information obtained upon request from a person. The exemption does not include information filed with or received by a public agency pursuant to state statute. The University contends that the payrolls it maintains were not required to be submitted to the University by state statute. The University instead requested the payrolls to “spot check” the contractors. The records identify each employee by name and Social Security number and indicates the number of hours each individual worked and the pay each received for the pay period. The University contends this is confidential financial information.

ANALYSIS

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

The following records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- . . . (5) 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. I.C. § 5-14-3-4(a).

A “person” means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity. I.C. § 5-14-3-2(j).

Here the University contends the certified payrolls it has received were submitted pursuant to its request to the contractor. The University contends that the contractor was under no legal obligation to produce the records and likely would not have done so absent the protection provided by I.C. § 5-14-3-4(a)(5).

The issue of disclosure of certified payrolls has previously been addressed by this office. In *Opinion of the Public Access Counselor 03-FC-28*, the Town denied access to certain information contained in certified payrolls it maintained. Counselor O’Connor opined that the Town had not provided statutory authority that would allow it to withhold from disclosure the

certified payroll records in question. The issue of the confidential financial information exception found at I.C. § 5-14-3-4(a)(5) was not raised. I have addressed the issue of the confidential financial information exception as it relate to certified payrolls in an informal opinion I issued on January 4, 2008. That informal opinion can be found at <http://www.in.gov/pac/informal/2008/informalInquiryCertifiedPayrollRecords49.pdf>. Based on the definition of confidential financial information provided in *Opinion of the Public Access Counselor 03-FC-56*, it was my opinion the certified payrolls at issue could be withheld based on the exception.

Opinion of the Public Access Counselor 03-FC-56 contemplates the meaning of the confidential financial information exception. “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.” Using this definition, it is my opinion at least some of the information contained in the certified payrolls is confidential financial information.

Further, the certified payrolls contain Social Security numbers of individuals. The APRA prohibits an agency from disclosing the Social Security number of an individual contained in the agency’s records. I.C. § 5-14-3-4(a)(12). As such, the University may not disclose the Social Security number of any individual contained in the certified payrolls.

When a record contains disclosable and nondisclosable information, the agency must separate the disclosable information and make it available for inspection and copying. I.C. § 5-14-3-6(a). Here, the Social Security numbers of individuals may not be disclosed. Further, any confidential financial information contained in the records may not be disclosed, since those records were received upon request by the agency and the contractor was not required by state statute to submit those records. I.C. § 5-14-3-4(a)(5). To the extent any information contained in the records is not excepted from disclosure under the exceptions listed, it is my opinion the University would need to separate that information and make it available. To the extent the University claims all the information contained in the certified payrolls is excepted from disclosure, the University bears the burden of proof to sustain the denial. I.C. § 5-14-3-9(f). Because I am unfamiliar with certified payrolls, I do not know what other information may be included in the records and as such cannot determine whether the University can sustain that burden by denying access to the records in their entirety.

CONCLUSION

For the foregoing reasons, it is my opinion the University has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Kiply Suzanne Drew, Indiana University Associate General Counsel