



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

October 4, 2011

Scott Smith
Kokomo Tribune
300 N. Union Street
Kokomo, Indiana 46901
Scott.Smith@kokomotribune.com

Re: Informal Inquiry 11-INF-55; Howard County

Dear Mr. Smith:

This is in response to your informal inquiry regarding Howard County ("County"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1, *et seq.* Lawrence R. Murrell, County Attorney, responded on behalf of the County. His response is enclosed for your reference.

In response to a records request made of the County, you received a copy of a settlement agreement ("Agreement") entered into between General Motors Components Holding, LLC and various County public agencies. County Attorney, Lawrence R. Murrell, advised that acting pursuant to I.C. § 5-14-3-6(a), the County redacted the information considered to be confidential and non-disclosable pursuant to I.C. § 6-1.1-35-9. You believe that the redactions contained in the Agreement go well beyond simply protecting non-disclosable information that is required under the APRA. You cite the County's decision to redact the subject headers for the redacted paragraphs as example of the excessive nature to which the County withheld certain portions of the Agreement. Your position is that the public has a right to know what sort of agreement county officials reached with General Motors, as the agreement directly affects the property tax burden of every citizen in Howard County.

In response to your informal inquiry, Attorney Murrell advised that the County was required to redact information in the Agreement pursuant to I.C. § 5-14-3-4(a)(1) and I.C. § 6-1.1-35-9. Generally, the information made confidential pursuant to the statute is required to be provided to the Department of Local Government Finance in Form 103. In connection with filing Form 103, a taxpayer also has to file Form 104, which provides the Final Assessed Value of the property and is designated as available for public inspection. Assessors are subject to summary dismissal from their elected position should they disclose information in an unauthorized manner any information made confidential pursuant to the I.C. § 6-1.1-35-9.

Mr. Murrell provided that the County could have withheld the disclosure of the entire Agreement, asserting that everything contained in it related to Form 103 financial information. However, in the interest of public access, the County opted not to take this extreme position. Thus, the County separated the material that may be disclosable from that which was confidential, and made the Agreement available for inspection and copying. However, the County is of the belief that you made a valid argument in regards to the subject headers that were redacted and has now provided that information to you.

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.” *See* I.C. § 5-14-3-1. The County is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the County’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The APRA states that a public agency may not disclose records that are “declared confidential by state statute.” I.C. § 5-14-3-4(a)(1). I.C. § 6-1.1-35-9 provides the following regarding certain confidential information:

- Sec. 9. (a) All information that is related to earning, income, profits, losses, or expenditures and that is:
- (1) Given by a person to:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board of county commissions or a county assessor under IC 6-1.1-36-12; or
 - (2) acquired by:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board of county commissioners or a county assessor under IC 6-1.1-35-12;
- in the performance of the person’s duties; is confidential. The assessed valuation of tangible property is a matter of public record and is thus not confidential. Confidential information may be disclosed only in a manner that is authorized under subsection (b), (c), (d), or (g).

An assessing official or an employee of an assessing official shall immediately be dismissed from that position if the person discloses in an unauthorized manner any information that is classified as confidential under section 9. *See* I.C. § 6-1.1-35-11. Further, if a county or township official or an employee of such an official or board discloses in an unauthorized manner information that is classified as confidential under section 9, a person who owns property which the information pertains to may recover liquidated damages in the amount of five-hundred dollars (\$500); or the person’s actual

damages resulting from the unauthorized disclosure. *See* I.C. § 6-1.1-35-12. Finally, a public employee or official who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor.

The APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). In *Indianapolis Star v. Trustees of Indiana University*, 787 N.E.2d 893 (Ind.Ct. App. 2003), the Indiana Court of Appeals held that Ind. Code § 5-14-3-6(a) requires an agency to separate disclosable information from the nondisclosable information where the two types of information are not “inextricably linked.” *Id.* at 914. Here, the County has redacted information that it maintains it was required to withhold pursuant to I.C. § 6-1.1-35-9. All other information provided in the Agreement has been disclosed.

Because no information before me suggests that the County has improperly withheld otherwise disclosable information, I cannot find that the County violated the APRA. However, I note that if this matter were to proceed to judicial review, a Court would be able to conduct an inspection of unredacted versions of the Agreement and decide whether or not the redacted information was properly or improperly withheld. The APRA allows the Court, not the Public Access Counselor, the right to review the public record in camera to determine whether any part of it may be withheld. *See* I.C. § 5-14-3-9(h). In such a case, section 9 of the APRA notes that the County would bear the burden of proof to sustain its denial of access. *See Opinion of the Public Access Counselor 10-FC-83*. Assuming the County’s description of the material found in the Agreement is confidential pursuant to I.C. § 6-1.1-35-9, it is my opinion that the County did not violate the APRA by redacting it prior to making it available to the public.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Lawrence R. Murrell