



# 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](http://www.IN.gov/pac)

April 16, 2015

Mr. James D. Biggs  
750 South 2<sup>nd</sup> Street  
Chesterton, Indiana 46304

*Re: Formal Complaint 15-FC-86; Alleged Violation of the Access to Public Records Act by the Porter County Board of Commissioners*

Dear Mr. Biggs,

This advisory opinion is in response to your formal complaint alleging Porter County Board of Commissioners (“Board”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Board has responded to your complaint via Board President, Mr. John Evans. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 6, 2015.

## **BACKGROUND**

Your complaint dated March 5, 2015 alleges the Porter County Board of Commission violated the Access to Public Records Act.

On February 19, 2015, you requested a copy of the CVS Caremark contract as a member of the Porter County Council. You allegedly were told you would be required to sign an attestation, which would forbid you from disclosing the contract to anyone.

On March 24, 2015, the Board responded to your complaint. The Board has secured from Caremark a redacted version of the contract which may be released to the public. Additionally, Caremark maintains the confidentiality of the contract under Ind. Code §§ 5-14-3-4(a)(4) and (5), alleging the existence of confidential financial information and trade secrets. The Board contends the information was properly redacted.

## **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



# 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](http://www.IN.gov/pac)

of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1.

Caremark is correct Ind. Code §§ 5-14-3-4(a)(4) and (5) does provide financial information and trade secrets are nondisclosable. The question does not appear to be one of substantive trade secret or confidential financial information. The operative issues seems to be whether the Board can force a member of the Council to sign a confidentiality agreement before disclosing sensitive material in an inter-agency records release.

This Office does not oversee internal operations of local government apart from access issues. The exchange of information between a Board and Council of the same political subdivision is largely an internal matter. Concerns about the release of sensitive information may be moot, however, in light of Ind. Code § 5-14-3-6.5 which states A public agency which receives a confidential public record from another public agency shall maintain the confidentiality of the public record. Therefore it may be facially unnecessary, however, given the information does appear to be trade secrets, the Board may wish to ensure the efficacy of section 6.5 by having the other agency sign a confidentiality agreement. If anything, this may serve to maintain the integrity of the relationship between the Board and its vendor. While the attestation may be redundant, it is not prohibited.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Porter County Board of Commissioners has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt  
Public Access Counselor



# 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](http://www.IN.gov/pac)

Cc: Mr. John Evans