



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

June 13, 2014

Mr. Robert Minarik
5288 N. 1000 W.
Rochester, IN 46975

Re: Formal Complaint 14-FC-102; Alleged Violation of the Access to Public Records Act by the Indiana Department of Revenue

Dear Mr. Minarik,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Revenue (“DOR”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Deputy General Counsel Douglas Klitzke. 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 May 8, 2014.

BACKGROUND

Your complaint dated May 5, 2014 alleges the Indiana Department of Revenue violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

You ordered a product through LIMU Company, LLC, a Florida corporation, which charged \$8.40 pursuant to the 7% Indiana sales tax with respect to your order. You are seeking information from INDOR with regards to LIMU and this sales tax. Specifically, you are seeking “the agreement document and all collateral documents made by the state of Indiana with The LIMU Company”, “the documents of authority granted to IDOR ... that authorize the collection of a tax on products purchased by anyone from Indiana from an out of state company”, “the document that identifies the names of other companies with whom the state of Indiana or IDOR has an agreement to collect a tax on purchases made by citizens of Indiana from out of state persons or companies”, “the document that verifies that IDOR actually did receive the payment [you] submitted to LIMU company”, and “the document of determination, along with the facts and reference to the law in support, that authorizes the state of Indiana to override the provisions of the Constitution

for the United States that places interstate commerce under the authority of the United States of America.”

On March 31, 2014, you made a request to INDOR for documents. You allege INDOR denied this March 31, 2014 request in its entirety by a letter dated March 26, 2014. However, it is unclear if the date was in error and the letter was in response to the March 31, 2014 request, or if the letter was in response to an earlier email request for the same or similar documents. On April 2, 2014, you responded in writing to INDOR’s March 26, 2014 letter, addressing your concerns; it does not appear you received a response to your April 2, 2014 letter.

On May 19, 2014, INDOR responded to your formal complaint. INDOR specifically addresses only the first document you requested on your March 31, 2014 request: “the agreement document and all collateral documents made by the State of Indiana with the LIMU Company ... to collect kind of tax on my purchase of product from that company.” INDOR states the document you seek is “a completed Form BT-1 ‘Indiana Department of Revenue Business Tax Application’ which contains a provision for the applicant to collect ‘Out-of-State Use Tax.’” This document, they argue, contains taxpayer information declared confidential under IC § 6-8.1-7-1 and social security numbers which are prohibited from disclosure under IC § 4-1-10-3.

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.” See Ind. Code § 5-14-3-1. The Indiana Department of Revenue is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the DOR’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As to the tax documentation requested by the Florida Company, DOR has cited the relevant statutes declaring the information confidential. Ind. Code § 6-8.1-7-1(a) declares confidential all information regarding taxpayer documentation and prohibits the Department of Revenue from disclosing said documents. The Access to Public Records Act states records declared confidential shall not be released without a court order under Ind. Code § 5-14-3-4(a)(1).

DOR's only potential shortcoming is not providing you with a copy of the Indiana Code section dealing with the collection of out of state taxes. However, DOR is not the custodian of the Indiana Code; it is freely available. In fact, DOR does publish a link to the relevant tax collection statutory authority on the *Frequently Asked Questions* page of their website. I am no authority on the matter, but it appears your primary contention is with Indiana's Use Tax. It can be found at Ind. Code § 6-2.5-3 et. al. Any Constitutional challenge to the tax would be addressed by a Federal court.

CONCLUSION

It is the Opinion of the Public Access Counselor the Indiana Department of Revenue did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Douglas Klitzke, Esq.