# STATE OF INDIANA

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Ms. Manda Clevenger
Indiana State Department of Health
*Via email:* *mclevenger1@isdh.in.gov*

*Re: Informal Inquiry 11-INF-48; I.C. § 5-14-3-4(a)(4)*

Ms. Clevenger,

In regards to what is considered a "trade secret", there is no requirement in the Access to Public Records Act ("APRA") that a private entity mark a record as a trade secret when it is submitted to the agency. Many times, when an agency receives a public records request for a record that it might believe to be a trade secret, they consult with the private entity to make the determination. I would note though that the agency, not the private entity, is the final arbiter of whether the record is a trade secret. In many cases, there is no one within the agency that can determine whether the record is a trade secret. In I.C. 5-14-3-2(o), the APRA defines a "trade secret" as having the meaning set forth in the Uniform Trade Secrets Act, I.C. 24-2-3-2(c):

> "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
>
> (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

However, courts have noted that what constitutes trade secret information is not always clear. *See, e.g., Franke v. Honeywell, Inc.*, 516 N.E.2d 1090, 1093 (Ind. Ct. App. 1987), *trans. denied*. In litigation, courts determine whether or not something is a trade secret as a matter of law. *Id.* "The threshold factors to be considered are the extent to which the information is known by others and the ease by which the information could be duplicated by legitimate means." *Id.* "Information alleged to be a trade secret that cannot be duplicated or acquired absent a substantial investment of time, expense or effort may

meet the 'not readily ascertainable' component of a trade secret under the Act." *Id.*, citing *Amoco Product. Co. v. Laird*, 622 N.E.2d 912, 919 (Ind. 1993). For example, Indiana courts have determined that trade secret protection should be afforded to a compilation of documents including customer contact information, manufacturing costs, blueprints and price summaries, as well as a customer list of names not able to be created by means outside the business operations of the list owner. *See Infinity Products, Inc. v. Quandt*, 810 N.E.2d 1028, 1032 (Ind. 2004), *trans. denied*; *Kozuch v. CRA-MAR Video Center, Inc.*, 478 N.E.2d 110, 113-14 (Ind. Ct. App. 1985), *trans. denied*. It would seem that case law supports the premise that customer contact information or customer lists are trade secrets, as such the (a)(4) would make such lists confidential and prohibit disclosure.

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

Best regards,

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