

January 22, 2008

DeAnna Bruner
Chief Counsel and Administrative Officer
Indiana State Department of Agriculture
101 West Ohio Street; Suite 1200
Indianapolis, Indiana 46204

Re: Your informal inquiry

Dear Ms. Brunner:

This is in response to your informal inquiry dated January 16, 2008. Pursuant to Ind. Code §5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You inquire whether the Indiana Grain Buyers and Warehouse Licensing Agency (“IGBWL”), created within the Indiana State Department of Agriculture (“ISDA”), may disclose, absent a subpoena, to a federal law enforcement agency information obtained by the ISDA pursuant to I.C. §26-4-4-7. The information concerns grain buyers operating in Indiana.

ANALYSIS

The public policy of the Indiana Access to Public Records Act (“APRA”)(Ind. Code 5-14-3) states, "(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." I.C. §5-14-3-1. The ISDA 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 ISDA 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).

An agency may not disclose any records declared confidential by state statute. I.C. §5-14-3-4(a)(1).

The following state statutes regarding the duties of the IGBWLA are pertinent to the present issue.

Inspection of books and records; verification; confidentiality

Sec. 7. (a) The:

(1) books and records of each grain buyer must clearly indicate the producer premiums collected by the grain buyer; and

(2) portion of the books and records reflecting the premiums collected must be open for inspection by the corporation, board, board's authorized agents, director, or the director's designee during regular business hours.

(b) The corporation, board, board's authorized agent, director, or the director's designee may take steps reasonably necessary to verify the accuracy of the portion of a grain buyer's books and records that reflect the premiums collected. **The information obtained under this section is confidential for purposes of IC 5-14-3-4(a)(1). Unless otherwise required by judicial order, the information obtained under this section may be disclosed only to parties empowered to see or review the information. The corporation, board, or director may respond to inquiries or disclose information obtained under this section only in accordance with guidelines set forth in IC 26-3-7-6.5.**

(c) Notwithstanding subsections (a) and (b), the verification permitted under subsection (b) must be completed by the agency unless two-thirds (2/3) of the board vote to have the verification completed by an independent auditor.

I.C. §26-4-4-7. *Emphasis added.*

Disclosure of information

Sec. 6.5. **Unless in accordance with a judicial order**, the director, the agency, its counsel, auditors, or its other employees or agents **shall not divulge any information disclosed by the applications or reports filed or inspections performed under the provisions of this chapter, except to agents and employees of the agency or to any other legal representative of the state or federal government otherwise empowered to see or review the information.** The director may disclose the information only in the form of an information summary or profile, or statistical study based upon data provided with respect to more than one (1) warehouse, grain buyer, or buyer-warehouse that does not identify the warehouse, grain buyer, or buyer-warehouse to which the information applies.

I.C. §26-3-7-6.5. *Emphasis added.*

The two provisions governing the information obtained by the IGBWLA declare confidential the information obtained by the agency. I.C. §26-3-7-6.5; §26-4-4-7. As such, the agency may not disclose the information upon request under the APRA. I.C. §4-14-3-4(a)(1). The question here is whether the federal law enforcement agency is “otherwise empowered” to see or review the information. I see nothing in the IGBWLA statute that specifically allows the IGBWLA or ISDA to disclose the information to a law enforcement agency absent a subpoena. It is my opinion these provisions regarding grain buyer information require separate statutory authority for the release of the information to the law enforcement agency.

A public employee or official who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor. I.C. §5-14-3-10(a). A public employee or official who unintentionally or unknowingly discloses confidential or erroneous information in response to a request under the APRA is immune from liability for such disclosure. I.C. §5-14-3-10(c).

CONCLUSION

It is my opinion that absent another state statute or federal law empowering the law enforcement agency to see or review the information, the IGBWLA or ISDA may not disclose the information to the law enforcement agency absent a judicial order. It is further my opinion that knowing or intentional disclosure absent separate statutory authority or a judicial order allowing or requiring disclosure would trigger I.C. §5-14-3-10.

Best regards,



Heather Willis Neal
Public Access Counselor