

February 11, 2008

Barry Macey  
Macey Swanson and Allman  
445 North Pennsylvania Street, Suite 400  
Indianapolis, Indiana 46204

*Re: Formal Complaint 08-FC-34; Alleged Violation of the Access to Public Records Act by the Indiana Gaming Commission*

Dear Mr. Macey:

This is in response to your formal complaint alleging the Indiana Gaming Commission (“Commission”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to records. I have enclosed a copy of the Commission’s response to your complaint for your reference. It is my opinion the Commission violated the APRA.

#### BACKGROUND

You allege that you submitted a request to the Commission dated October 2, 2007 October 5, 2007. You sought the address and telephone number of each of the 713 individuals listed; the list contained names of badge holders for the Caesars Casino. The Commission responded by letter dated December 13. The Commission denied your request, citing Ind. Code § 4-33-5-1.5, which makes confidential, among other things, the home telephone number of an applicant for a license issued by the Commission. The Commission further argued that the release of the home address of personal information of private citizens does not advance the state’s public policy relating to open government. The Commission contended that I.C. § 4-1-6-2(i) restricts the Commission from disclosing names and addresses of individuals for solicitation purposes. You allege this constitutes denial of access under the APRA and as such filed this complaint on January 11, 2008.

The Commission responded to your complaint by letter dated January 28 from Andrew Klinger of the Commission. Mr. Klinger explains that the Commission answered your first request related to information regarding badge holders in August 2007. The Commission provided you with a list of licensee names, license numbers, and positions. Mr. Klinger contends the home telephone numbers of licensees are declared confidential by state statute (see I.C. § 4-33-5-1.5) and are thus excepted from disclosure under the APRA. See I.C. § 5-14-3-4(a)(1). Mr

Klinger further contends that the home addresses of licensees are protected from disclosure pursuant to the Fair Information Practices Act (“FIPA”)(Ind. Code 4-1-6). Mr. Klinger cites your intent to use the information for commercial purposes as justification for denying access to the addresses. Mr. Klinger further contends the release of the home addresses of licensees could present a risk to the licensees and their families.

## 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." Ind. Code § 5-14-3-1. The Commission 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 Commission 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).

You have requested the home addresses and telephone numbers of 713 licensees of the Commission. The Commission has denied you access to the telephone numbers based on I.C. § 4-33-5-1.5, which declares confidential certain information submitted, collected, or gathered as part of the application process. The home telephone number is specifically listed as one piece of information which is declared confidential. I.C. § 4-33-5-1.5(3). Records declared confidential by state statute are excepted from disclosure under the APRA. I.C. § 5-14-3-4(a)(1). As such, the Commission may not provide you access to the telephone numbers.

The home address of an applicant is not listed in I.C. § 4-33-5-1.5 as confidential information. Further, I.C. § 4-33-5-2 requires the Commission, notwithstanding any other law, to provide access to any information provided under section 1 of the chapter (regarding the license application).

The Commission has cited the Fair Information Practices Act (“FIPA”), Ind. Code 4-1-6, for the proposition that the address information is confidential. My predecessor addressed this issue in *Opinion of the Public Access Counselor 05-FC-145*:

To clear up any confusion, FIPA does not confer confidentiality on any record. FIPA sets out guidelines for the use, maintenance, and intra-agency exchange of records regarding personal information in a “personal information system.” While FIPA provides for the secure handling of confidential information, it does not specifically declare a record confidential. The confidentiality of the records must be established by some other statutory authority. *Id.*

I agree with Counselor Davis -- the FIPA does not confer confidentiality to any record. As such, the FIPA cannot be used to withhold records or information from disclosure.

While the Commission provides compelling privacy concerns regarding the information, the APRA does not contain a privacy clause. Any records not excepted from disclosure must be

provided upon request. I.C. § 5-14-3-3. Because no statute declares the address information confidential, the Commission must provide the address information you have requested.

I understand the Commission's argument that compiling the requested information will take a considerable amount of time. While a public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees (see I.C. § 5-14-3-7(a)), section 7 does not operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If a list of licensee home addresses does not exist, the Commission is not required to create a list.

The Commission must, though, provide the information you have requested that is not excepted from disclosure under the APRA. When a record contains both disclosable and nondisclosable information, the agency must separate the material and make the disclosable information available. I.C. § 5-14-3-6(a). The Commission may provide access to only the disclosable information contained in the applications. The Commission has indicated that if it is required to provide the addresses, it will create a list of names and addresses. While the APRA provides that a public agency is not required to create or provide copies of lists of names and addresses unless the agency is required to publish and disseminate such lists to the public (see I.C. § 5-14-3-3(f)), nothing in the APRA prohibits the Commission from creating such a list.

Regarding the Commission's assertion that you intend to use the list for commercial purposes, the General Assembly has addressed the use of public information for commercial purposes and has prohibited the disclosure of certain lists for commercial use. I.C. § 5-14-3-3(f). The names and addresses you request do not fall under this prohibition.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Commission has violated the APRA by failing to disclose the addresses you requested.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Andrew Klinger, Deputy General Counsel, Indiana Gaming Commission