



# STATE OF INDIANA

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June 9, 2008

Gregory Grace  
2115 Lindberg Road  
West Lafayette, Indiana 47906

*Re: Formal Complaint 08-FC-143; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation*

Dear Mr. Grace:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Transportation ("Department") 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 Department's response to the complaint for your reference. It is my opinion the Department has not violated the APRA.

## BACKGROUND

In your complaint you allege that on May 23, 2008 the Department denied you access to information relating to the total benefits paid to your neighbors for their home. You have indicated you are seeking the information because you are involved in an eminent domain action initiated by the Department. You include a copy of a page of the Federal Register provided to you by the Department. The page contains the confidentiality provision regarding certain records maintained by the Department. You filed this complaint on May 28. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the complaint by electronic mail dated June 4 from Kevin McClure of the Department. The Department contends you requested a copy of the deed conveying the neighbor's property to the Department as well as the total relocation benefits made. Mr. McClure indicates he sent you a copy of the deed. In addition, Mr. McClure indicated to you that I.C. § 8-23-2-6(c)(2) classifies a portion of the file containing appraisal and relocation documents as confidential. Further, 49 CFR 24.9(b) requires certain records to be kept confidential.

## ANALYSIS

The public policy of the APRA 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 Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. As such, any person has the right to inspect and copy the public records of the Department 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).

Among records an agency is prohibited from disclosing pursuant to a request are records declared confidential by state statute or required to be kept confidential by federal law. I.C. § 5-14-3-4(a). Such records may not be disclosed by an agency unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. *Id.*

Indiana law provides the following:

c) The department shall:

...

(2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division. . .  
I.C. § 8-23-2-6.

Further, federal regulations provide the following:

(a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) Confidentiality of records. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.  
49 C.F.R. § 24.9 (2005).

Both Indiana statute and federal regulations provide that certain records related to the acquisition and displacement of property, including appraisal and relocation documents prepared by the Department's land acquisition division, shall be maintained as

confidential records. As such, the Department may not disclose those records. A public employee who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor. I.C. § 5-14-3-10.

It is my opinion the Department is required to maintain as confidential certain records related to the acquisition of property. In my opinion the records you requested, except the deed which has already been provided to you, are nondisclosable under the APRA, pursuant to state statute and federal law.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Kevin McClure, Indiana Department of Transportation