



# STATE OF INDIANA

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April 27, 2016

Mr. Jacob A. Herr  
4415 Kensington Drive  
Logansport, Indiana 46947

*Re: Formal Complaint 16-FC-51; Alleged Violation of the Access to Public Records Act by the Logansport Municipal Utilities*

Dear Mr. Herr:

This advisory opinion is in response to your formal complaint alleging the Logansport Municipal Utilities (“LMU”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. LMU has responded to your complaint via Ms. Bette Dodd, Esq., and Ms. Anne E. Becker, Esq. The 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 March 10, 2016.

## **BACKGROUND**

Your complaint dated March 7, 2016 alleges the Logansport Municipal Utility violated the Access to Public Records Act by failing to provide you with the documents you requested.

On February 25, 2016, you submitted a public records request to LMU for an employment contract between the Logansport Utilities Service Board (“USB”) and the Superintendent. Additionally, you requested the current Purchase Power Agreement (“PPA”) between LMU and Duke Energy.

You were denied both on February 26, 2016 citing the USB’s discretion over the employment contract and the PPA was offered to you in redacted form.

LMU responded to your formal complaint by arguing that you have been provided the employment contract in the interim and the redaction of the PPA was appropriate in order to protect the trade secrets of Duke Energy, LMU’s contractor.

## **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 Logansport Municipal Utilities 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 LMU’s disclosable 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).

Employment contracts are generally disclosable public record and should be provided for public inspection upon request. It appears as if LMU has subsequently provided you the contract for review. Therefore, further discussion of this matter is moot.

As for the PPA, Ind. Code § 5-14-3-4(a)(4) states records containing trade secrets may not be disclosed by a public agency. This means if a public agency is the custodian of a record of a non-governmental third party, it must not disclose any trade secrets contained therein. It matters not if it is LMU’s trade secret, if it contracts with a third party and a document is part of the contract which contains matters of pricing or some other proprietary financial information, it shall not be disclosed. Ind. Code § 24-2-3-2 defines trade secret as:

"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.

As long as the redacted portion of a contract meets the stated definition above, then the redaction is appropriate. The kind of pricing cited usually falls into a trade secret category. If there is a factual dispute over whether the redacted information qualifies, only a trial court judge could make the determination. Based upon the information provided, however, it appears as if the redaction(s) have been performed lawfully.

### **CONCLUSION**

Based on the forgoing, it is the opinion of the Public Access Counselor the Logansport Municipal Utilities has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be the initials 'JTB' with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Bette J. Dodd, Esq.; Ms. Anne E. Becker, Esq.