

January 24, 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 regarding the Indiana Grain Buyers and Warehouse Licensing Agency

Dear Ms. Brunner:

This is in response to your informal inquiry dated January 15, 2008. Pursuant to Ind. Code §5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

Your inquiry relates to the Indiana Grain Buyers and Warehouse Licensing Agency (“IGBWLA”), created within the Indiana State Department of Agriculture (“ISDA”). The Director of the IGBWLA has two functions – to oversee licensing of grain buyers and warehouses under Ind. Code 26-3-7, including receiving their license application information, and to administer the grain indemnity fund at the behest of the Grain Indemnity Corporation through its Board. Ind. Code 26-4-3.

You present two questions. First, you indicate that pursuant to I.C. §26-4-4-7(b), the Director or his 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.” Information obtained in this section is declared confidential. Your inquiry is whether any extraneous information submitted by the grain buyer but not requested by the Director becomes a public record subject to disclosure pursuant to the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3).

Second, you address I.C. §26-3-7-6.5, which provides that “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” is not disclosable. 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.” *Id.* Your question is whether an information summary or profile can contain identifying information such as address, name, or license status; in other words, does the line “that does not identify the warehouse, grain buyer, or buyer warehouse to which the information applies” apply only to a statistical study or to an information summary or profile as well?

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 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).

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.

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.

Your first inquiry is whether any extraneous information submitted by the grain buyer but not requested by the Director becomes a public record subject to disclosure pursuant to the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3). Ind. Code §26-4-4-7(b) declares confidential the information obtained by the agency under this section, which allows the Director to “take steps reasonably necessary to verify the accuracy of the portion of a grain buyer’s books and records that reflect the premiums collected.” *Id.* An agency may not disclose upon request under the APRA any records declared confidential by state statute. I.C. §4-14-3-4(a)(1).

Here the Director is allowed to take steps necessary to verify the accuracy of information. It is understandable that to do so the Director may require the submission of information from the grain buyer to the IGBWLA upon the Director’s request. The General Assembly has declared confidential information obtained under this section but does not limit confidentiality only to documents requested by the Director. It is my opinion that this provision applies to any information obtained in the process of verifying the accuracy of the grain buyer’s books, so long as the intent of the APRA is not frustrated.

In other words, it is my opinion any information a grain buyer submits to the IGBWLA to help the Director verify the accuracy would be confidential under I.C. §26-4-4-7(b). In the example you pose, the Director asks for a bank statement, and the grain buyer provides a bank statement plus a business plan. To the extent the grain buyer has provided that information in an attempt to help the Director understand the grain buyer’s books, it is my opinion it would be confidential. To the extent the grain buyer submits extraneous records which could not reasonably be believed to assist the Director in verifying the information but instead the grain buyer submitted, or the Director received, the information in an attempt to circumvent the APRA, it is my opinion such information would not be confidential under I.C. §26-4-4-7(b).

Your second inquiry is whether the line “that does not identify the warehouse, grain buyer, or buyer warehouse to which the information applies” found in I.C. §26-3-7-6.5 applies only to a statistical study or to an information summary or profile as well. “The best evidence of legislative intent is surely the language of the statute itself, and courts strive to give the words in a statute their plain and ordinary meaning. A statute should be examined as a whole, avoiding excessive reliance upon a strict literal meaning or the selective reading of individual words. The Court presumes that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals.” *Prewitt v. State of Indiana*, 878 N.E.2d 184 (Ind. 2007).

Here, it is my opinion the underlying policy and goal of the statute is to maintain the confidentiality of the information provided in the applications or reports filed or inspections performed under the provisions of the chapter. As such, it is my opinion that when the Director is allowed to disclose some of the information, the Director may do so only in a manner that does not reveal the information provided in a particular application, report, or inspection.

I read the statute to indicate that the Director may provide the information in an information summary or profile, which I do not believe would reveal the contents of the applications, reports, or inspections but might reasonably contain some information identifying the entity about which the summary or profile was created. Further, I read the statute to allow the Director to provide a statistical study for a group of warehouses, grain buyers, or buyer-warehouses, so long as the Director does not identify which warehouses, grain buyers, or buyer-warehouses fall into which categories in the study. As such, it is my opinion the provision in question applies only to the statistical study.

Best regards,



Heather Willis Neal
Public Access Counselor