



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 26, 2008

Michael Malik
217 North Sixth Street
Lafayette, Indiana 47901

Re: Formal Complaint 08-FC-152; Alleged Violation of the Access to Public Records Act by the City of Lafayette

Dear Mr. Malik:

This advisory opinion is in response to your formal complaint alleging the City of Lafayette ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you electronic access to records. I have enclosed a copy of the City's response to the complaint for your reference. It is my opinion the City has not violated the APRA.

BACKGROUND

You filed a complaint with this office on June 10, 2008. You did not provide a narrative description of your allegations but instead provided a synopsis of correspondence between you and the City. You marked the box on the complaint form indicating you were denied electronic access to records. Because the City has denied a portion of the information you have requested, I assume your complaint relates to denial of that information. Specifically, the City has denied access to the names and addresses of individuals Denison Parking, on behalf of the City, has cited for parking violations. The City and Denison Parking indicated to you this particular information may not be disclosed based on I.C. 9-14-3.5, the state implementation of the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721 et seq.) ("DPPA").

The City responded to your complaint by letter dated June 23 from Deputy Corporation Counsel Jacqueline Chosnek. The City indicates it has contracted with Denison Parking, LLC ("Denison") to provide parking management services for two parking lots, a parking garage, and all on-street parking spaces owned by the City. While Denison provides the City with monthly operating reports, it does not provide the City with information regarding specific citations issued. Denison staff notes parking violations and sends the information to Citation Management, Inc, which follows up on collection activity. The information Denison provides to Citation Management includes license plate number and violation information but does not include the name or address

of the owner of the vehicle. Citation Management accesses the Bureau of Motor Vehicles database to obtain the name and address of the owner of the violating vehicle.

The City contends that Denison indicated it would provide much of the information you requested but would not provide the names and addresses of owners of the vehicles because of the prohibition to disclosure in I.C. § 9-14-3.5-10. The City clarifies it does not take the position the records are exempt from disclosure because they are created and maintained by Denison or Citation Management. Instead, the City contends that I.C. § 5-14-3-4(a)(1) prohibits the City from disclosing records declared confidential by state statute. The City further contends that the DPPA limits the disclosure of personal information in a driver's record, including name and address, to only those uses set forth in I.C. § 9-14-3.5-10(a). The City contends the DPPA further prohibits re-disclosure of the personal information except as permitted by I.C. § 9-14-3.5-13. The City contends that your intended use does not fall within this provision.

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 City 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 City 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).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2(m). The Indiana Court of Appeals has further added to the definition records created for or on behalf of a public agency. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). While this decision is applicable here, the City does not dispute that the records created and maintained by Denison and Citation Management on behalf of the City are public records.

An agency may not disclose records declared confidential by state statute unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a)(1). The City asserts the DPPA (I.C. 9-14-3.5) requires the City to keep the names and addresses of the vehicle owner as confidential. The DPPA is a state law which restricts the disclosure of personal information. Relevant portions of the DPPA follow:

As used in this chapter, "personal information" means information that identifies a person, including an individual's:

- (1) digital photograph;
- (2) Social Security number;
- (3) driver's license or identification document number;

- (4) name;
- (5) address (but not the 5-digit zip code);
- (6) telephone number; or
- (7) medical or disability information.

The term does not include information about vehicular accidents, driving or equipment related violations, and operator's license or registration status.

I.C. § 9-14-3.5-5

Except as provided in section 10.5 of this chapter, the bureau may disclose personal information to a person if the person requesting the information provides proof of identity and represents that the use of the personal information will be strictly limited to at least one (1) of the following:

(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions.

(2) For use in connection with matters concerning:

(A) motor vehicle or driver safety and theft;

(B) motor vehicle emissions;

(C) motor vehicle product alterations, recalls, or advisories;

(D) performance monitoring of motor vehicles, motor vehicle parts, and dealers;

(E) motor vehicle market research activities, including survey research; and

(F) the removal of nonowner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a business or its agents, employees, or contractors, but only:

(A) to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors; and

(B) if information submitted to a business is not correct or is no longer correct, to obtain the correct information only for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with a civil, a criminal, an administrative, or an arbitration proceeding in a court or government agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or under an order of a court.

(5) For use in research activities, and for use in producing statistical reports, as long as the personal information is not published, re-disclosed, or used to contact the individuals who are the subject of the personal information.

(6) For use by an insurer, an insurance support organization, or a self-insured entity, or the agents, employees, or contractors of an insurer, an insurance support organization, or a self-insured entity in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by a licensed private investigative agency or licensed security service for a purpose allowed under this section.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 2710 et seq.).

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any use in response to requests for individual motor vehicle records when the bureau has obtained the written consent of the person to whom the personal information pertains.

(12) For bulk distribution for surveys, marketing, or solicitations when the bureau has obtained the written consent of the person to whom the personal information pertains.

(13) For use by any person, when the person demonstrates, in a form and manner prescribed by the bureau, that written consent has been obtained from the individual who is the subject of the information.

(14) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

However, this section does not affect the use of anatomical gift information on a person's driver's license or identification document issued by the bureau, nor does it affect the administration of anatomical gift initiatives in the state. I.C. § 9-14-3.5-10.

(a) An authorized recipient of personal information, except a recipient under section 10(11) or 10(12) of this chapter, may resell or re-disclose the information for any use allowed under section 10 of this chapter, except for a use under section 10(11) or 10(12) of this chapter.

(b) An authorized recipient of a record under section 10(11) of this chapter may resell or re-disclose personal information for any purpose.

(c) An authorized recipient of personal information under IC 9-14-3-6 and section 10(12) of this chapter may resell or re-disclose the personal information for use only in accordance with section 10(12) of this chapter.

(d) Except for a recipient under section 10(11) of this chapter, a recipient who resells or re-discloses personal information is required to maintain and make available for inspection to the bureau, upon request, for at least five (5) years, records concerning:

(1) each person that receives the information; and

(2) the permitted use for which the information was obtained.

I.C. § 9-14-3.5-13.

Here, the City contends that Denison, through a sub-contractor, obtains the name and address of the vehicle owners through the Indiana Bureau of Motor Vehicles database. Denison, as a person acting on behalf of a governmental agency, receives this information pursuant to I.C. § 9-14-3.5-10(1). The City contends that certain information

it has obtained, namely the names and addresses, is personal information pursuant to I.C. § 9-14-3.5-5. I agree with this assertion. Because the names and addresses constitute personal information and because the City has obtained the information pursuant to I.C. § 9-14-3.5-10(1), it is my opinion the City may only re-disclose that information for use as authorized by I.C. § 9-14-3.5-10. See I.C. § 9-14-3.5-13.

The City contends it has reviewed the list of authorized uses under I.C. § 9-14-3.5-10 and does not believe your intended use falls within that list. If this is true, it is my opinion the City may not disclose the personal information to you. If your intended use were an authorized use under I.C. § 9-14-3.5-10, the City would be allowed to disclose the information to you.

CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jacqueline Chosnek, City of Lafayette