

September 12, 2005

Rita K. Staton  
6632 Sonesta Drive  
Indianapolis, IN 46217

*Re: Formal Complaint 05-FC-164; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Welfare Services, Child Support Bureau*

Dear Ms. Staton:

This is in response to your formal complaint alleging that the Indiana Department of Child Welfare Services, Child Support Bureau (“Bureau”) violated the Access to Public Records Act (“APRA”) by denying your request for records.

#### BACKGROUND

On August 12, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-164. In your complaint you state that you hand-delivered a request for “information allowed per Title IV-D” sometime around the 21<sup>st</sup> of July 2005. The Bureau states, in its response to your request that the request was dated July 26, 2005. No further information regarding the records you requested was provided, nor did you provide a copy of the request.

Mr. William E. Steffen, Chief Legal Counsel for the Bureau, wrote to you on August 5, 2005 to deny your request. You received that letter on August 8, 2005. It appears that the letter was also forwarded to you via electronic mail on August 5, 2005. Mr. Steffen asserted in the denial letter that the records you requested are confidential under the provisions of IC 12-17-2-24 and IC 5-14-3-4(a)(3). Further, he explained that Title IV-D information is confidential pursuant to 42 USC sections 653, 654(26), 654a(d), and 663 of the Public Health and Welfare laws as well as 26 USC 6103 of the Internal Revenue Code. He then stated that should you wish to request any information pertaining to your personal case that the information may be released to you.

Mr. Steffen responded to your complaint by letter dated September 2, 2005. A copy of that letter is enclosed for your reference. Mr. Steffen stated that you requested voluminous materials, none of which pertained to any case involving you. Mr. Steffen did not provide any

additional justification beyond that contained in his denial letter to you. He did mention a memo issued by the Indiana Supreme Court to the Clerks of the Circuit Courts. Although he indicates that the memo was issued in conjunction with the Public Access Counselor's Office in July 2002, he did not provide a copy of the memo and my staff was unable to obtain a copy of that memo. Therefore, I will not consider the memo in my analysis.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for a record in person or over the telephone must respond within 24 hours of the time the request is received. IC 5-14-3-9(a). A response to a written request for records must be in writing; a denial, if any, must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). APRA requires an agency to deny records that are required to be kept confidential by federal law. IC 5-14-3-4(a)(3). The burden of proof is on the public agency to sustain its denial. The public agency meets its burden of proof that a record is exempt under section 4(a) by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit. IC 5-14-3-9(f).

Initially, I will address the issue of whether the Bureau timely responded to your request. You hand-delivered your request; therefore, the Bureau was required to respond to your request within 24 hours of receiving it. Although it is not clear what the exact date of delivery of your request was, it appears to have been delivered sometime during the week of July 26, 2005. The Bureau's response was not made until August 5, 2005. The Bureau violated the Access to Public Records Act when it failed to respond to your request within 24 hours of receipt.

You allege in your complaint that the Bureau improperly denied your request for records. In its denial the Bureau cited to state and federal statutes as the basis for the denial. The Bureau inaccurately cites to IC 5-14-3-4(a)(3) for the proposition that all records, data, including federal and state tax information, and personal information associated with any Title IV-D are confidential. This statement is inaccurate in that IC 5-14-3-4(a)(3) does not classify specific records as confidential. Rather, the federal provisions determine confidentiality of the records. However, the Bureau was correct in that it must cite to IC 5-14-3-4(a)(3), which provides that records declared confidential by a federal law are exempt from disclosure under the APRA. When citing to federal law, a state agency must confirm that the federal law does in fact apply to the agency.

The analysis of whether the Bureau properly denied your records is complicated by the fact that neither you nor the Bureau provided any details regarding the content of your records request. When any person makes a request for records from a public agency, he must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a). If your request was as you stated in your complaint, then the agency could have asked for further clarification regarding your request as it does not appear to be reasonably particular. It is difficult to evaluate whether

the Bureau's response applies to the records that you have requested; your complaint states only that you requested "information allowed per Title IV-D."

State statute does declare some Title IV-D information confidential, as well as providing a statutory requirement that the Bureau follow federal regulations regarding the information obtained under this program. IC 12-17-2-24 provides that:

- (a) The bureau shall observe all possible safeguards for information obtained by the bureau with the minimum standard for the safeguards to be the federal regulations governing the safeguarding of information under this program.
- (b) The bureau or the prosecuting attorney may not disclose information obtained through the parent locator service, except to the extent necessary to fulfill a duty under this chapter.

IC 12-17-2-24.

The Bureau also cited to federal statutes as the basis for denying you access to the requested records. 42 USCS §654 provides that a state plan for child and spousal support must have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties. This section requires the plan to include, in part:

- (A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;
- (B) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;

42 USCS §654(26). In short, this section provides that information regarding paternity proceedings, support proceedings, or child custody proceedings may only be disclosed in authorized instances. However, this section does not specify what information is deemed confidential. It would behoove the agency to also cite to that provision which declares the information to be confidential.

42 USCS §663, regarding the use of Federal Parent Locator Service in connection with the enforcement or determination of child custody and in cases of parental kidnapping of a child, provides that information regarding the most recent address and place of employment of any parent or child shall be disclosed to authorized persons, upon request, for the purpose of enforcing state or federal law with respect to the unlawful taking or restraint of a child; or making or enforcing a child custody or visitation determination. 42 USCS §663. An "authorized person" is:

- (A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination;
- (B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.”

42 USCS § 663. Therefore, you must be an authorized person to obtain information under this statute. You have not indicated whether you are an authorized person under this statute.

42 USCS §654(a) requires that a state agency administering the state program under 42 USCS §§ 651 *et seq.* have in operation a single statewide automated data processing and information retrieval system. The automated data system must provide for information integrity and security. The state is required to have policies restricting access to the data in the system to authorized persons for program purposes only. 42 USCS §654(a)(d). This requirement applies specifically to the Bureau, as a state agency administering the program. Therefore, if the records you seek are only maintained in the data system, and you are not an authorized person under 42 USCS §654(a) the Bureau may properly deny you access to these records.

42 USCS §653, which establishes the Federal Parent Locator Service, requires the disclosure of certain information, including information on, or facilitating the discovery of, the location of a specified individual including social security number, most recent address, and the name, address, and employer identification number of the individual’s employer; information on the individual’s wages and benefits; and information regarding the individual’s assets. 42 USCS §653 (a). However, the statute requires that the information must be disclosed to authorized persons. Authorized persons would include the resident parent, legal guardian, attorney, or agent of a child. The statute does not state whether there are any circumstances under which the information would be provided to persons who are not authorized persons; it merely requires disclosure to authorized persons.

Finally, the Bureau cites 26 USCS §6103, which provides, in pertinent part:

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (12), (16), (19), or (20) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

26 USCS §6103. Although this section most likely applies to the Bureau, it has not pinpointed under which provision it applies. If the Bureau is subject to this section it could properly deny you access to records that are tax returns or contain tax return information, if you requested such records.

The federal statutes cited by the Bureau for the proposition that Title IV-D records are declared confidential lack the clarity that may be found in other laws classifying records as confidential. On the record before me, you requested information allowed per Title IV-D. The federal provisions cited by the Bureau state that certain persons are authorized under each section to obtain records. The Bureau has the burden of showing that its records are confidential. To the extent that your request is for information received by the Bureau through the Parent Locator Service, I find that the Bureau is required under IC 12-17-2-24 to maintain those records as confidential.

#### CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Child Services, Child Support Bureau violated the Access to Public Records Act when it failed to respond to your request for records within 24 hours of receiving it. The Bureau must sustain its denial under section 4(a) by showing that the records you requested are confidential under federal law. The Bureau has the expertise in this area; this office is unable to determine whether federal law supports the denial of the Title IV-D records or not. If you continue to believe that the records are not confidential, or that you are an authorized person, you may file an action in the circuit or superior court of the county in which the denial occurred to compel the Child Support Bureau to permit you to inspect and copy the records. IC 5-14-3-9(e).

Sincerely,

Karen Davis  
Public Access Counselor

cc: William E. Steffen