



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 11, 2012

Eric R. Jackson
2751 State Road 39N
LaPorte, Indiana 46350

Re: Formal Complaint 12-FC-250; Alleged Violation of the Access to Public Records Act by the Indiana Department of Workforce Development

Dear Mr. Jackson:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Workforce Development ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Allan Wasson, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on August 20, 2012 you submitted a written request to the Department for a full copy of the most recent UC-1 Voucher for a specific employer. On August 27, 2012, the Department responded in writing and provided that your request had been denied pursuant to I.C. §§ 34-46-2-15, 22-4-19-6(b), 22-5-17-9, 42 U.S.C. § 503(a)(1) and 20 C.F.R. §§ 603.4(b)-(c), 603.7(a)-(b).

In response to your formal complaint, Mr. Wasson advised that the information you had requested from the Department was considered confidential pursuant to I.C. §§ 34-46-2-15, 22-4-19-6(b), 22-5-17-9, 42 U.S.C. § 503(a)(1) and 20 C.F.R. §§ 603.4(b)-(c), 603.7(a)-(b). As you failed to demonstrate that you were entitled to this information as a matter of law, the disclosure of the record was prohibited. Indiana's unemployment insurance program is a federally funded program administered by the states under the supervision of the U.S. Department of Labor. In order to maintain funding of this program, States are required to adopt certain provisions for maintaining confidentiality of the information they receive. 42 U.S.C. § 503(a) provides that the Department of Labor "shall make no certification of payment to any State unless it finds that the law of such State includes provisions for . . . [s]uch methods of administration . . . reasonably calculated to insure full payment of unemployment compensation when due . . ." In accordance with this provision, 20 C.F.R. 603.4(b) states:

“The Department of Labor interprets Section 303(a)(1), SSA, to mean that “methods of administration” that are reasonably calculated to insure the full payment of Unemployment Compensation (“UC”) when due must include the provision for maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publically available information to reveal such particulars, and must include provisions for barring the disclosure of any such information . . .”

In compliance with the federal statute and regulation, Indiana has enacted I.C. § 22-4-19-6(b), which provides that “information obtained or obtained from any person in the administration of this article and the records of the department relating to unemployment tax or the payment of benefits is confidential and may not be published or be open to public inspection . . .” Further, pursuant to I.C. § 5-14-3-4(a)(1), a public agency is expressly prohibited from disclosing records declared confidential by state statute. The Department’s records with respect to unemployment tax paid by an employer are thus made confidential pursuant to I.C. § 22-4-19-6(b). Knowingly disclosing this information would subject employees to criminal liability pursuant to I.C. § 5-14-3-10(a). As you have failed to show that you are entitled to the information and such records are made confidential pursuant to state law, the denial of your request was proper under the APRA.

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* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA a public agency denying access in response to a written public records request must put the denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Counselor O’Connor provided the following analysis regarding section 9:



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Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either “establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit” *to the court*. Similarly, if the public agency claims an exemption under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. *Opinion of the Public Access Counselor 01-FC-47.*

In response to your request for records and to your formal complaint, the Department has advised that the records you have requested are considered to be confidential pursuant to I.C. §§ 34-46-2-15, 22-4-19-6(b), 22-5-17-9, 5-14-3-4(a)(1), 42 U.S.C. § 503(a)(1) and 20 C.F.R. §§ 603.4(b)-(c), 603.7(a)-(b). The Department provided in its denial of your request the name and title of the person responsible for the denial as required by section 9(c) of the APRA. The Department’s response to your formal complaint provided a thorough analysis of the state and federal statutes that are applicable to the records that were sought and the penalties (i.e. financial and criminal) that would follow should the Department provide records that are deemed to be confidential by state and federal law. *See also Opinion of the Public Access Counselor 08-FC-125.* As such, it is my opinion that the Department did not violate the APRA in denying your request for the records.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Allan Wasson