



STATE OF INDIANA

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June 12, 2013

Ms. Spencena Bingham-Longstreet
2510-D Grenadier Lane
Lafayette, Indiana 47905

Re: Formal Complaint 13-FC-148; Alleged Violation of the Access to Public Records Act by the Department of Child Services

Dear Ms. Bingham-Longstreet:

This advisory opinion is in response to your formal complaint alleging the Department of Child Services (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Kathleen Carmosin, Case Manager, and Craig Jones, Attorney, responded on behalf of the Department. Their response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you were improperly denied access to records requested of the Department and the records that were provided were not disclosed in a reasonable period of time. You further allege that you were only able to retrieve the copies that were provided by working with an outside agency.

In response to your formal complaint, the Department has advised that you have been provided with all records responsive to your request. All records requested were not available in electronic format; those not available electronically have been provided in paper format. The Department has repeatedly offered to allow you to come to its offices to inspect your file to confirm that you have received all records responsive to your request. The Department has further offered to make copies free of charge. You have declined the Department’s invitation. You have requested that the Department provide you with weekly reports regarding your case. The Department has advised that reports are generated on a monthly basis and you have been and will continue to be provided with copies. However, the Department will not create reports on your preferred schedule.

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 24 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. You allege that the Department has failed to provide all records responsive to your request. In response, the Department maintains that all records have been provided and you have been offered the opportunity to inspect the Department’s file to confirm that the proper disclosures have been made. I would note that the Department would not violate the APRA by failing to create a record in order to satisfy a request. Based on what has been presented, if the Department has provided all records responsive to your request, it has not violated the APRA.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public*

Access Counselor 06-FC-184; 08-FC-56; 11-FC-172. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. From what has been provided, it is my opinion that the Department has met its burden to demonstrate that all records responsive to your request have been provided in a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA by failing to create a record in order to satisfy a request for records. If the Department has provided all records responsive to your request, it is my opinion that it has complied with the requirements of the APRA. Lastly, it is my opinion that the Department has met its burden to demonstrate that all records responsive to your request have been provided in a reasonable period of time.

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: Kathleen Carmosin, Craig Jones