



STATE OF INDIANA

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July 9, 2013

Mr. Phillip M. Littler
DOC 121098
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 13-FC-174; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles

Dear Mr. Littler:

This advisory opinion is in response to your formal complaint alleging the Indiana Bureau of Motor Vehicles ("BMV") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Pamela Walters, Attorney, responded on behalf of the BMV. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted correspondence to the BMV requesting certain information regarding an individual who maintains an Indiana Driver's License. In response, the BMV provided you with a copy of State Form 53789 ("State Form") that is required to be completed in order to submit a request for a driver's record maintained by the BMV. You allege that your request was denied improperly, the fees requested by the Department are excessive, and that the State Form improperly requires that you provide a reason for the request.

In response to your formal complaint, Ms. Walters advised that you specifically requested all "department filings . . . to include (but not limited to) photo copy of driver's license, tickets, suspensions, renewals, et cetera." Ms. Walter's initially notes that your request was not made with reasonable particularity as you gave no further identifying information other than the individual's first and last name. In order to process the request, the BMV would need additional identifying information in order to properly locate the records for the individual requested (e.g. date of birth, address). The BMV requires that all requests for such information be submitted on the State Form, to which the BMV has yet to receive a completed copy. Further, you failed to submit proper payment to the agency for the records sought, which is authorized pursuant to I.C. § 9-29-2.

Lastly, Ms. Walters noted that personal information and high restricted personal information contained within an individual's driving record is confidential pursuant to I.C. § 9-14-3.5. Highly restricted information is considered to be information that identifies an individual by a digital photograph or image, social security number, or medical or disability information. Personal information is defined as information that identifies a person and can include an individual's digital photograph or image, social security number, driver's license or identification document number, name, address, telephone number or medical or disability information. Pursuant to I.C. § 9-14-3.5-10, personal information may be disclosed for limited purposes. Further, the person requesting said information must provide proof of identity and represent that the use of personal information will be limited to the purposes stated in the statute. When a person does not qualify pursuant to one of the purposes cited, a redacted record is disclosed.

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 BMV 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 BMV'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. At the agency's discretion, a request to inspect and copy may be in writing or on a form provided by the agency. *See* I.C. § 5-14-3-3(a)(2). Upon receipt of your request, the BMV provided you with the requisite State Form that must be completed in order to submit a request for a copy of a driver's record. You have never submitted a completed State Form to the BMV in order to allow the agency to process your request. It is my opinion that the BMV did not deny your request for records by requiring that you complete the State Form.

The APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a). As the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor* 02-FC-13; 05-FC-87; 11-FC-88. Further, the APRA does not require public agencies to conduct a manual or electronic search of its records to determine what records might contain information that is responsive to a request. *See Opinions of the Public Access Counselor* 04-FC-38; 09-FC-124; and 10-FC-57. Here,

the BMV provided that your request lacked reasonable particularity as you only provided the first and last name of the individual. The BMV did not deny your request; it informed you that it needed additional information, identified in the State Form, in order to commence the process of searching for all records responsive to your request. It is my opinion that the request submitted failed to identify the records sought with reasonable particularity and the BMV did not violate the APRA in requiring that you provide further information in order to fulfill your request.

Pursuant to I.C. § 5-14-3-8(f), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. A public agency may require a person to pay the copying fee in advance. I.C. § 5-14-3-8(e)(2). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. Pursuant to I.C. § 9-29-2-1, the fee to obtain a certified copy of a record from the BMV is four dollars (\$4) for each document. The fee is in addition to the uniform copying fee established under I.C. § 5-14-3-8. *See* I.C. § 9-29-2-1. It is my opinion that the BMV did not violate the APRA in requiring that the applicable fees be paid prior to the disclosure of any records in response to your request.

As noted by the BMV in its response to your formal complaint, you are seeking information regarding an individual's driving record that is not your own. 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). "Highly restricted personal information" includes digital photographs or images, social security number and medical or disability information that identifies an individual. *See* I.C. § 9-14-3.5-2.5. "Personal information" is defined as information that identifies a person, including an individual's digital photograph or image, social security number, driver's license or identification number, name, address, telephone number or medical or disability information. *See* I.C. § 9-14-3.5-5. The term does not include information about vehicular accidents, driving or equipment related violations, and driver's license or registration status. *Id.* Regarding the disclosure of "personal information", I.C. § 9-14-3.5-10 provides:

Sec. 10. The bureau may disclose certain personal information that is not highly restricted information 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;
 - (F) the removal of nonowner records from the original owner records of motor vehicle manufacturers; and
 - (G) motor fuel theft under IC 24-4.6-5.
- (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 this section affect the administration of anatomical gift initiatives in the state.

Further, I.C. 9-14-3.5-10.5 provides that highly restricted information may be disclosed only as follows:

Highly restricted personal information may be disclosed only as follows:

(1) With the express written consent of the person to whom the highly restricted personal information pertains.

(2) In the absence of the express written consent of the person to whom the highly restricted personal information pertains, if the person requesting the information:

(A) provides proof of identity; and

(B) represents that the use of the highly restricted personal information will be strictly limited to at least one (1) of the uses set forth in section 10(1), 10(4), 10(6), and 10(9) of this chapter.

The BMV would be required to comply with I.C. § 9-14-3.5-10 and I.C. § 9-14-3.5-10.5 in response to your request for an individual's driver's record. Each statute requires that prior to the disclosure of highly restricted personal information and personal information, that the person making the request represents the use of the information. The BMV has provided if the intended use does not comply with either statute, a redacted copy of the record is provided. As such, it is my opinion the Department is required to inquire about the use of personal and highly restricted personal information prior to disclosure in response to your request and the BMV did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the BMV did not violate the APRA in response to your request.

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: Pamela Walters