



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 16, 2013

Dr. Earl Braunlin, M.D.  
717 West Jefferson Blvd.  
Fort Wayne, IN 46802

*Re: Formal Complaint 13-FC-274; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Disability Determination Bureau*

Dear Dr. Braunlin,

This advisory opinion is in response to your formal complaint alleging the Indiana Family and Social Services Disability Determination Bureau ("Bureau") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Bureau has responded to your complaint through Ms. Elizabeth M. Karlson, Esq. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 16, 2013.

## BACKGROUND

Your complaint alleges the Indiana Family and Social Services Disability Determination Bureau violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).<sup>1</sup>

You allege that two requests dated July 22, 2013 and August 26, 2013 were submitted to the Bureau seeking the following records:

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<sup>1</sup> Please be advised that because the denial of records would occur seven days after your latter request on August 1, 2013, the operative date for denial is August 8, 2013. Accordingly, your formal complaint was filed on September 16, 2013 and is therefore outside of the timeline established in Ind. Code § 5-14-5-7. Therefore, this Opinion is for advisory and educational purposes only and should not be considered as persuasive authority in a cause of action filed with a trial court.

A copy of the guidelines the bureau uses to govern examiners who meet with potential social security recipients during the initial determination phase. I am also requesting a copy of all information and letters regarding my experience as a Social Security Disability examiner.

It does not appear that the Bureau did not respond to either request. It is deemed denied under the APRA. You filed your formal complaint to this office on September 16, 2013.<sup>2</sup>

### 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 Ind. Code § 5-14-3-1. The Indiana Family and Social Services Disability Determination Bureau is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Bureau’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The only issue before the Public Access Counselor is the issue of whether the absence of the Bureau’s response to your request constitutes a denial under the APRA. Based upon the response to your formal complaint, the Bureau is the custodian of the records. Additionally, the records you seek are public records under the APRA. There is no exception that would render their release discretionary. Because the denial is not justified by any applicable exception in the statute, the Bureau has technically violated the APRA.

It should be noted the Bureau has advised this Office the parties are working together to release records responsive to your request. I trust that the cooperation of the Bureau is to your satisfaction.

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<sup>2</sup> In your complaint, you request the Public Access Counselor also contact Indiana Governor Michael Pence in regard to your dissatisfaction of the Bureau. You also request an in-person discussion of your perceived shortcomings with FSSA. Please be advised that these requests are beyond the scope Public Access Counselor and there are alternative administrative remedies for your discontent with the Bureau.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Indiana Family and Social Services Disability Determination Bureau violated the APRA in denying your request, but has remedied the violation by working with you to produce the records you seek.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Elizabeth M. Karlson, Esq.