
OPINION OF THE PUBLIC ACCESS COUNSELOR

SUSIE TALEVSKI,
Complainant,

v.

FSSA DIV. OF DISABILITY & REHABILITATIVE SERV.,
Respondent.

Formal Complaint No.
19-FC-47

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Family and Social Services Administration's division of Disability and Rehabilitative Services violated the Access to Public Records Act.¹ Attorney Kian Hoss filed an answer on behalf of the office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 20, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over personal contact information of a State board.

On or about May 20, 2019, Susie Talevski (“Complainant”) received the production of documents subsequent to a previously submitted public access request. The request sought Financial Disclosure Form 55167, submitted by members of the Rehabilitation Services Commission (“Commission”). Complainant had expressed her frustration with an inability to communicate her displeasure with the Commission and sought to contact individual members directly. She had felt unsuccessful in contacting the published email address for the Commission and other state employees who serve on or for the Commission.

Complainant received the requested forms, but takes exception to the manner in which they were redacted. Specifically residential addresses and home telephone numbers were redacted. The form itself allegedly states that the Financial Disclosure Statement is available for public inspection.

The Family and Social Services Administration (“FSSA”) responded on behalf of its Disability and Rehabilitative Services Division and the Commission. It argues that it redacts personal information of employees and board members to preserve the privacy of those civil servants who serve the State and cites the Indiana Fair Information Practices Act² as justification for doing so.

² Ind. Code § 4-1-6 et. al.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

The Indiana Fair Information Practices Act (“FIPA”) contains similar language at Indiana Code section 4-1-6-8(a). Those disclosure requirements are balanced against any expectation of personal privacy.

The General Assembly specifically exempts from disclosure lists of personal information of public employees in certain instances and is generally guarded against the disclosure of home addresses.³

Additionally, the Auditor of State must keep confidential the home address of any payee whether it is a public employee or contractor for the purposes of compensation or reimbursement.⁴ It follows that any State agency would be similarly prohibited from doing the same under Indiana code section 5-14-3-6.5 (“A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record”). This is despite

³ Ind. Code §§ 5-14-3-3(f); 2(b)(19)(L); 2(b)(20)(B) & (2)(b)(21)(B).

⁴ Ind. Code § 5-14-3.5-4(a)(1)

the fact that the Indiana Inspector General receives Financial Disclosure Forms.

Insofar as a home address is contained in a personnel file, only business address is required to be disclosed. *See* Ind. Code § 5-14-3-4(b)(8)(A).

Furthermore, the FIPA instructs State agencies to be extremely vigilant regarding the disclosure of personal information and data. In fact, the APRA declares the knowing release of confidential information to be a crime pursuant to Indiana code section 5-14-3-10(a).

The VR Commission has an email address and phone number for lodging complaints. They have regular noticed public meetings that are open to the public, presumably with a public comment forum within the meeting. The Commission is staffed by full-time FSSA employees that can be reached during regular business hours. They have a mailing address to which communication can be sent through US post. Giving individual board and commission members state email addresses is a possible solution but is not required.

This office cannot police responsiveness to grievances but it can offer guidance to those seeking information which is clearly considered sensitive, and possibly confidential, especially when there are alternative outlets for public access.

This office chooses not to ratify a position wherein home addresses and personal contact information of volunteer public servants are disclosed without their consent. The Complainant's point is well taken that the form itself does state "This Financial Disclosure Statement is open for public inspec-

tion". This would certainly give the Complainant an expectation of the full disclosure of the form's contents. The probative portion of the form has indeed been disclosed: conflicts of interest, business ownership, close financial associations, etc. The sensitive portions have been separated, however, which is still consistent with the law pursuant to Indiana code section 5-14-3-6.

Absent any affirmative statute or rule to the contrary, there simply exists no compelling, demonstrable and overriding public interest in disclosure of personal contact information of those who serve on state boards or commissions.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Fair Information Practices Act can be read harmoniously with the Access to Public Records Act to give state agencies the ability to redact home addresses from the Financial Disclosure Statements and release the remainder.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor