



STATE OF INDIANA

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May 30, 2008

Jason Smathers
511 Prentiss Way
Avon, Indiana 46123

Re: Formal Complaint 08-FC-125; Alleged Violation of the Access to Public Records Act by the Indiana Department of Workforce Development

Dear Mr. Smathers:

This advisory opinion is in response to your formal complaints alleging the Indiana Department of Workforce Development ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Department's response to the complaint for your reference. It is my opinion the Department has not violated the APRA.

BACKGROUND

You allege that you submitted a request to the Department for copies of unemployment claims, unemployment payments, and unemployment appeals made by an individual. You submitted the request via electronic mail ("email") on May 6, 2008. On May 7 you received a response via email from the Department indicating the request had been sent to the legal department. You filed this complaint on May 14, alleging you had received no further communication.

The Department responded to your complaint by letter dated May 29 from attorney Megan Renner. The Department contends that its response to you on May 7 was a sufficient response to the request. Further, the Department sent you a subsequent correspondence, denying access to the records based on I.C. § 5-14-3-4(a)(1) and I.C. § 22-4-19-6(b).

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of

the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, email, or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Department received your request on May 6. The Department responded to your request on May 7 with an indication that the request had been forwarded to the legal department. While I advise agencies to provide as much information as possible in a response, like how or when the agency intends to provide further communication or produce the records, this response from the Department is sufficient pursuant to the APRA, which requires only a response and does not provide any requirements for the response. *See* I.C. § 5-14-3-9(b).

When the Department corresponded with you further, the Department denied access to the information based on I.C. § 5-14-3-4(a), which provides that an agency may not disclose certain records unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. Specifically prohibited from disclosure are any records declared confidential by state statute. I.C. § 5-14-3-4(a)(1).

A state statute declares confidential certain records maintained by the Department:

Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax, the skills 2016 assessment under IC 22-4-10.5-3, or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

I.C. § 22-4-19-6(b).

Nothing in subsections (d) or (f) or the remainder of the section allows the Department to provide you the requested information absent a court order. Because this information is declared confidential, a public employee or official who knowingly or intentionally discloses the information commits a Class A misdemeanor. I.C. § 5-14-3-10(a). As such, the Department may not disclose the requested information.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Megan Renner, Indiana Department of Workforce Development