



STATE OF INDIANA

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Susan Hoppe

Via e-mail: shoppe@idoa.in.gov

Informal Inquiry 11-INF-70; DCS Ombudsman

Susan,

I apologize for taking a little longer than expected to get back with you after our meeting last week. After reviewing the Access to Public Records Act ("APRA") found under I.C. 5-14-3, I.C. 4-13-9 concerning the Department of Child Services Ombudsman, and I.C. 31-33-18 regarding the confidentiality of certain records relating to the reports made pursuant to I.C. 31-33, I provide the following guidance. I have also attached a general information sheet that our office makes available to the public regarding inquiries dealing with juveniles.

As I indicated in our meeting, but am better able to articulate to you now, any records that DCS would consider confidential and not be permitted to disclose in response to a public records request, the Ombudsman would be bound by the same requirements. A report of child abuse or neglect made pursuant to I.C. 31-33 (or I.C. 31-6-11 before its repeal) is confidential. I.C. 31-33-18-1 provides the following:

IC 31-33-18-1

Confidentiality; exceptions

Sec. 1. (a) Except as provided in section 1.5 of this chapter, the following are confidential:

- (1) Reports made under this article (or IC 31-6-11 before its repeal).
- (2) Any other information obtained, reports written, or photographs taken

concerning the reports in the possession of:

- (A) the division of family resources;
- (B) the county office;
- (C) the department; or
- (D) the department of child services ombudsman established by IC 4-13-19-3.

(b) Except as provided in section 1.5 of this chapter, all records held by:

- (1) the division of family resources;
- (2) a county office;
- (3) the department;
- (4) a local child fatality review team established under IC 31-33-24;

(5) the statewide child fatality review committee established under IC 31-33-25; or
(6) the department of child services ombudsman established by IC 4-13-19-3;
regarding the death of a child determined to be a result of abuse, abandonment, or neglect
are confidential and may not be disclosed.

Child abuse and neglect records must be available to certain people or agencies listed in I.C. § 31-33-18-2. The list includes people “about whom a report has been made.” In such an instance, the identities of people who reported actual or suspected abuse or neglect must be protected. I.C. § 31-33-18-2(14); *see Opinion of the Public Access Counselor 06-FC-194*. (<http://www.in.gov/pac/advisory/files/06-FC-194.pdf>).

In regards to the reports that the ombudsman prepares and files with DCS at the close of an investigation, I.C. 4-13-9(d)-(e) provides that:

(d) At the end of an investigation of a complaint, the office of the department of child services ombudsman shall provide an appropriate report as follows:

(1) If the complainant is a parent, guardian, custodian, court appointed special advocate, guardian ad litem, or court, the ombudsman may provide the same report to the complainant and the department of child services.

(2) If the complainant is not a person described in subdivision (1), the ombudsman shall provide a redacted version of its findings to the complainant stating in general terms that the actions of the department of child services were or were not appropriate.

(e) The department of child services ombudsman shall provide a copy of the report and recommendations to the department of child services. The office of the department of child services ombudsman may not disclose to:

(1) a complainant;

(2) another person who is not a parent, guardian, or custodian of the child who was subject of the department of child services' action or omission; or

(3) the court, court appointed special advocate, or guardian ad litem of the child in a case that was filed as a child in need of services or a termination of parental rights action; any information that the department of child services could not, by law, reveal to the complainant, parent, guardian, custodian, person, court, court appointed special advocate, or guardian ad litem.

In addition, I.C. 4-13-9-7(3) provides that except as necessary to investigate and resolve a complaint, ensure that the identity of a complainant will not be disclosed without: (A) the complainant's written consent; or (B) a court order.

I would also note that the Ombudsman is a separate bureau within the Department, appointed by the Governor and directly reports to the Commissioner of DCS. *See* I.C. 4-13-19-3. As such, beyond the information that is made confidential pursuant to the statutes listed above, any record/communication/correspondence that is in the possession of the Ombudsman that would be considered advisory or deliberative material that are expressions of opinion or of a speculative nature, and thus are communicated for the purposes of a decision making, the Ombudsman would retain

discretion whether to disclose said records in response to a records request. *See* I.C. 5-14-3-4(b)(6). This is often referred to as the deliberative materials exception.

Remember, the APRA only covers request for records, not information. If the Ombudsman does not have a record that is responsive to a records request, then it does not violate the APRA by not providing a record. An agency is not required to create a new record or report in response to a public records request. As to an inquiry received whether the Ombudsman was investigating a certain incident or case, as the AG's office and I have concluded, that would be in your discretion on how to respond to such inquiries.

I know this is a ton of information to digest regarding your issue, but what I would offer is that if you do receive a genuine public records request from someone, please feel free to give us a call so that we can assist you through the process. In general though, most of the information that you have in your office would be considered confidential pursuant to I.C. 33-31-18-1. If I've missed any specific points or questions that we spoke about last week, please let me know. I've also attached a copy of our Handbook that provides a number of examples in dealing with public records requests.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor