



STATE OF INDIANA

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February 14, 2012

Kathy Gregory
Chief Counsel, Division of Mental Health and Addiction
Family and Social Services Administration
Via email: Kathy.gregory@fssa.in.gov

Re: *Informal Inquiry 12-INF-05; I.C. § 12-21-5-1.5(6) and (7)*

Dear Ms. Gregory:

This is in response to your informal inquiry regarding whether the Indiana Family and Social Services Administration's Division of Mental Health and Addiction ("Division") properly interpreted Ind. Code § 12-21-5-1.5(6) and (7) in denying a request made pursuant to the Access to Public Records Act ("APRA"). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on the applicable provisions of the APRA, I.C. § 5-14-3 *et seq.*

BACKGROUND

On May 12, 2011, Mr. Charles Egger submitted a written APRA request to the Division for a copy of a complaint received in April of 2011. Mr. Egger provided that the complaint was filed by an unknown party concerning Ms. Diane Bolton and the Gallahue Mental Health Services ("Gallahue") facility in Shelbyville, Indiana. Mr. Egger speculated that the initial complaint was filed by Ms. Janet Potteroff, most likely using an assumed name. In addition to the initial complaint, Mr. Egger also requested all supporting documents and communications regarding the complaint, including a copy of any witness' statements. Mr. Egger advised that upon receiving the records, he intended to file a formal complaint with the Division and provide with it the information that he had gathered from an independent investigation.

On May 20, 2011, the Division responded in writing to Mr. Egger's request. The Division provided that it had received Mr. Egger's request on May 16, 2011 and briefly outlined what records were sought. A search had been conducted for the requested time period and the Division was unable to find any complaints that specifically mentioned Ms. Diane Bolton. The Division acknowledged that it did find records of two Consumer Service Lines calls placed by Mr. Egger on May 2 and 3, 2011. In the two phone calls received from Mr. Egger, he alluded to a termination of a therapist at Gallahue, but did

not specifically identify the individual. The Division also indicated that there was a third call received by the Consumer Service Line that described an observation made by the caller regarding a Gallahue employee, but the caller did not specifically identify any individual. In addition to the records regarding the three phone calls that had been received, there were two other documents that consisted of responses received by the Division from Gallahue regarding the allegations.

The Division outlined to Mr. Eggers that the toll free telephone number system (e.g. Consumer Services Line) that received the calls at issue was statutorily mandated by I.C. § 12-21-5-1.5(6). The Consumer Services Line is statutorily defined as a system that allows “individuals to make comments to the Division in a confidential manner regarding services or service providers.” *See* I.C. § 12-21-5-1.5(6). In light of I.C. § 12-21-5-1.5(6), the Division cited I.C. § 5-14-3-4(a)(1), which exempts from public disclosure those records made confidential by state statute, in denying Mr. Egger’s request for records regarding the complaints/calls received on the Consumer Services Line. As to Gallahue’s responses to the Division regarding the three complaints, the Division cited I.C. § 12-21-5-1.5(7), which requires the Division to ‘develop a confidential system to evaluate complaints’, in denying Mr. Egger’s secondary request for supporting documentation.

On February 8, 2012, Mr. Egger provided additional correspondence to the Division regarding his May 2011 APRA request. Mr. Egger’s provided that it was his opinion that a fraudulently made “complaint” did not retain its confidential status, as such the Division should provide to him the records that were sought. Mr. Egger adamantly maintained that the complaints received by the Division were fraudulently made. Mr. Egger’s further provided that the APRA does not require that he give a reason for his request and no speculation should be made regarding the motives for his request.

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 Division 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 Division’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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position



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of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Division responded in writing to Mr. Egger's written request within seven days of its receipt in compliance with I.C. § 5-14-3-9(b).

The APRA states that a public agency may not disclose records that are declared confidential by state statute." *See* I.C. § 5-14-3-4(a)(1). I.C. § 12-21-5-1.5(6) provides that the Division shall "establish a toll free number that operates during normal business hours for individuals to make comments to the Division in a confidential manner regarding services and service providers." The Consumer Service Line was developed by the Division in response to General Assembly's statutory mandate. The complaints referenced and requested by Mr. Eggers were received by the Division via the Consumer Service Line. As the complaints that were received were in regards to either services and/or service providers, the Division was prohibited from disclosing the record pursuant to I.C. § 5-14-3-4(a)(1), citing I.C. § 12-21-5-1.5(6). I am not aware of any statute or case law that would support Mr. Eggers' general references that fraudulent complaints received by the Division via the Consumer Service Line are not confidential. Had the General Assembly intended to exclude from confidentially those complaints received via the Consumer Service Line that were later found to be without merit or made fraudulently, it would have provided as such in I.C. § 12-21-5-1.5 or elsewhere in the Indiana Code. As the statute states that all comments received by the Division from the toll free number in regards to services and service providers are confidential, it is my opinion that the Division did not violate the APRA in response to Mr. Egger's request for records of the complaints received by the Division.

As to the responses received by the Division from Gallahue regarding the complaints, I.C. §12-21-5-1.5(7) requires the Division to "develop a confidential system to evaluate complaints." To the extent that the responses received from Gallahue were part of the Division's evaluation process, it is my opinion that the Division complied with I.C. § 5-14-3-4(a)(1) in denying Mr. Egger's secondary request for records pursuant to I.C. § 12-21-5-1.5(7).

Finally, while the APRA prohibits a public agency from denying a public records request because the requester refuses to state the purpose of the request, nothing prohibits a public official from inquiring about the reason for the request. *See* I.C. § 5-14-3-3(a)(2) and *Opinion of the Public Access Counselor 10-FC-264*.

If I can be of additional assistance, please do not hesitate to contact me.

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