

October 31, 2003

Mr. Michael A. Wilkins
C/o WTHR-TV, Channel 13
1000 North Meidian Street
Indianapolis, IN 46204-1076

Re: Formal Complaint 03-FC-93: *Alleged Denial of Access by Family and Social Services
Adminsitration*

Dear Mr. Wilkins,

This is in response to your complaint on behalf of WTHR-TV, Channel 13 (“WTHR”), received on October 3, 2003. In it, you allege that the Family and Social Services Administration (“FSSA”) violated the Access to Public Records Act (“APRA”). Specifically, you allege that WTHR asked FSSA to produce the names and addresses of all individuals receiving benefits from the Temporary Assistance for Needy Families program (“TANF”), the Medicaid program and Food Stamps program, and that FSSA has denied access to such information. Ms. Elizabeth A. Brown, Deputy General Counsel for FSSA, responded to your complaint. A copy of her response is attached for your reference.

For the reasons set forth below, it is my opinion that FSSA did not violate the APRA by denying WTHR access to the requested information relating to the Medicaid and Food Stamp programs. However, it is my opinion that FSSA violated the APRA by denying access to the requested information relating to TANF.

BACKGROUND

You allege that on approximately July 15, 2003, Roger Harvey, a WTHR reporter, made a request for documents from FSSA containing the names and addresses of all individuals receiving benefits from the TANF program. You allege that after an initial denial, Mr. Harvey renewed his request and expanded it to include the names of the recipients of Medicaid and Food Stamp benefits. You allege that the request was denied on the basis that the requested records were confidential. You allege that FSSA ultimately confirmed its denial of WTHR’s request on September 19, 2003. Your formal complaint followed. You allege that Indiana law, in particular Indiana Code § 12-14-22-5, requires such information to be disclosed.

In her response, Ms. Brown denies that you were improperly denied access to public records. She contends that FSSA is required, in order to administer federally assisted programs, to maintain the confidentiality of the records you have requested.

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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Ind. Code § 5-14-3-1.

The FSSA is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the FSSA during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). One exception to disclosure, Indiana Code section 5-14-3-4(a)(3), provides that a public agency may not disclose records required to be kept confidential by federal law.

TANF

WTHR’s first request is for the names and addresses of all individuals receiving benefits from the TANF program. The federal statute authorizing the TANF program provides that a State is eligible if, among other things, it submits a plan that includes an outline of how the State intends to “take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.” 42 U.S.C.A. 602(a)(1)(A)(iv). In addition to fulfilling the requirements of this statute, the State plan must provide that, “[p]ursuant to State statute which imposes legal sanctions: (1) the use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with” administration of the plan, any investigation conducted in connection with the administration of the plan, the administration of any other Federal or federally assisted program, the verification to a certifying agency that an individual has been a recipient for at least 90 days, any audit or similar activity by any governmental agency authorized to conduct the audit or other activity, the administration of a State unemployment compensation program, and the reporting of known or suspected instances of physical or mental injury. 45 CFR 205.50(a)(1)(i)(A)-(G). It is my opinion that neither federal statute nor the federal regulations governing TANF restrict access to the records in question. Both the federal statute and the federal regulation refer to actions the State intends to take to restrict access to information concerning TANF. The question here is whether Indiana law restricts access to the records in question.

The FSSA Division of Family and Children is charged with administering the TANF program. Ind. Code § 12-13-7-1(10). The FSSA failed to provide, and I have been unable to find, any Indiana statute or administrative rule restricting access to the requested information. Therefore, it is my opinion that FSSA’s denial of access to the records containing the names and addresses of individuals receiving benefits under the TANF program was an actionable violation of the APRA.

Medicaid

WTHR’s second request is for the names of the recipients of Medicaid. The federal statute authorizing the Medicaid program requires state Medicaid agencies to restrict the disclosure of information to those purposes directly connected with administration of the state plan. It provides,

A State plan for medical assistance must . . . provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. . . .

42 U.S.C.A. § 1396a(a)(7). Approval of the plan submitted by Indiana is a prerequisite to receiving funds to administer the Medicaid program. See 42 U.S.C.A. § 1396(a). “The office of Medicaid policy and planning shall administer the Medicaid program under 42 U.S.C. 1396 et seq.” Ind. Code § 12-15-1-1. As a condition of Indiana’s participation in the Medicaid program, therefore, FSSA must restrict the use or disclosure of information to purposes directly connected with the administration of the plan. Pursuant to that end, FSSA has promulgated 470 Indiana Administrative Code 1-3-1 et seq., which limits disclosure of such information to “purposes directly connected with: (1) The administration of a plan or program . . . ; (2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and (3) The administration of any other federal or federally assisted program. . . .” Since WTHR has not shown that it meets one of the above listed criteria it is my opinion that WTHR is not entitled to the information requested. Therefore, it is my opinion that FSSA did not violate the APRA by failing to provide WTHR with the requested information.

Food Stamps

WTHR’s final request is for the names of the recipients of Food Stamp benefits. The federal statute authorizing the Food Stamp program requires that states have safeguards which limit the use or disclosure of information obtained from applicants and recipients to persons directly connected with the administration or enforcement of the provisions of the program. It provides in relevant part that:

The State plan of operation . . . shall provide . . . safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally assisted State programs. . . .

7 U.S.C.A. § 2020(e)(8). This statutory language is further extrapolated by 7 CFR 272.1(c)(1), which limits use or disclosure of such information to six narrowly defined instances:

- i. Persons directly connected with the administration or enforcement of the Food Stamp Act or regulations . . . ;
- ii. Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system . . . ;
- iii. Persons directly connected with the verification of immigration status of aliens applying for food stamp benefits . . . ;
- iv. Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act . . . ;
- v. Employees of the Comptroller General’s Office of the United States . . . ; and
- vi. Local, State, or Federal law enforcement officers. . . .

The FSSA, Division of Family and Children, administers the federal Food Stamp program. Ind. Code § 12-13-7-1(8). In compliance with federal law, FSSA has restricted access to information concerning foods stamps under administrative rule 470 IAC 6-1-1, which states, “[i]ndividuals have regular access authority to the information contained in the personal information systems established by the Public Assistance Division of the Indiana state department of public welfare, subject to the requirements in 7

CFR § 272.1(c).” Therefore, it is my opinion that FSSA did not violate the APRA by denying WTHR access to the names of recipients of Food Stamp benefits, because as required by federal law FSSA by rule has restricted access to requested information. Therefore, it is my opinion that FSSA did not improperly deny you access to information you requested regarding food stamps.

CONCLUSION

It is my opinion that Family and Social Services Administration did not violate the Access to Public Records Act when it denied you access to information you have requested relating to the Medicaid and Food Stamp programs. With respect to the Medicaid and Food Stamp programs FSSA has promulgated rules restricting access to Medicaid and Food Stamp programs as is required under federal law. However, it is my opinion that FSSA committed an actionable violation of the APRA by denying you access to the requested documents relating to the TANF program.

Sincerely,

Sandra K. Bowman
Acting Public Access Counselor

Cc: Ms. Elizabeth Brown, Family and Social Services