

September 23, 1999

Mr. Michael Redell
9219 Indianapolis Boulevard, Suite B
Highland, IN 46322

Re: *ADVISORY OPINION No. 99-FC-5:*

Access to public records from the Indiana Health Professions Bureau.

Dear Mr. Redell:

You filed a formal complaint against the Indiana Health Professions Bureau (hereinafter, "IHPB,") and this Office received that complaint on September 15, 1999. In that complaint, you alleged that the IHPB failed to respond to a February 19, 1999, written request for access to the following public records:

Letters of application from each of the hypnotist schools that were approved by the State Medical Licensing Board on January 28, 1999, including pamphlets, letters and other documents used by the Indiana Hypnotist Committee and the Board in recommending and approving these schools.

A copy of your complaint was faxed to the IHPB and Ms. Angela Smith-Jones, Deputy Director of that agency, responded in writing in a memorandum dated September 20, 1999. A copy of her response, which includes the documents requested, is enclosed for your reference.

For the reasons stated below, it is my opinion that the public records you requested from the IHPB are not confidential or nondisclosable at the IHPB's discretion under Indiana Code section 5-14-3-4. Further, the IHPB denied access to these public records in violation of the Access to Public Records Act when it failed to respond to your written request within seven (7) days of its receipt under Indiana Code section 5-14-3-9(b).

ANALYSIS

Under Indiana Access to Public Records Act (hereinafter, "APRA,"), IC 5-14-3-3(a), a person "may inspect and copy the public records of any public agency during its regular business hours" except as provided under Indiana Code section 5-14-3-4. Indiana Code section 5-14-3-4 sets forth the bases for nondisclosure of a public record-either that the public record is confidential under subsection (a) or the public record is disclosable at the discretion of the public agency under subsection (b).

There does not appear to be any statute making the public records that you requested confidential or disclosable at the IHPB's discretion under Indiana Code section 5-14-3-4. In fact, the IHPB's response to your formal complaint was to forward copies of the public records you requested to me. It is my opinion as well that these public records are not confidential or subject to the discretionary disclosure provisions of Indiana Code 5-14-3-4.

The issue, therefore, is whether the denial of access to the public records requested was a violation of the APRA. When a written request is received by a public agency by mail or facsimile, the public agency must respond to that request within seven (7) days. Ind. Code α 5-14-3-9(b). This failure to respond constitutes a denial by the public agency. A requestor then has the option of filing a formal complaint with the public access counselor under Indiana Code 5-14-5 or filing an action in court to compel disclosure of the public record under Indiana Code section 5-14-3-9(d).

In your case, the IHPB failed to respond to your written request within seven (7) days of its receipt, and therefore, denied you access to the public records requested. The IHPB did not claim that the public records requested were confidential or otherwise nondisclosable, they just did not respond. Since the IHPB denied access to the public record and there is no basis for denial, the IHPB did violated the APRA by failing to provide the public records requested in response to your February 19, 1999 request. As noted above, however, the public records were provided to my office in response to your formal complaint and are enclosed.

CONCLUSION

It is my opinion that the public records requested from the IHPB are not confidential or nondisclosable at the IHPB's discretion under Indiana Code section 5-14-3-4. Further, the IHPB denied access to these public records in violation of the Access to Public Records Act when it failed to respond to your written request within seven (7) days of its receipt as required under Indiana Code section 5-14-3-9(b).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Angela Smith-Jones, IHPB

