

August 22, 2005

Sam Williams  
D.O.C. # 885684  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 05-FC-145; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Administration.*

Dear Mr. Williams:

This is in response to your formal complaint alleging that the Family and Social Services Administration (“FSSA”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for public records.

#### BACKGROUND

The Office of the Public Access Counselor received your formal complaint on July 21, 2005. Your complaint was assigned formal complaint # 05-FC-145. Your complaint was forwarded to the FSSA on July 25, 2005. Ms. Deniece Rogers Safewright, counsel for FSSA, responded on behalf of the FSSA by letter dated July 30, 2005. In the meantime, your original request for records was forwarded to this office by the Indiana Department of Correction. This office then forwarded the request to Ms. Safewright. Ms. Safewright supplemented her response on August 1, 2005, after receiving your request from this office. Copies of those letters are included for your reference. Your request was for records confirming whether your children and their mother had received welfare assistance.

Your request, while addressed to FSSA, contained the address for the Department of Correction. It is unclear whether FSSA ever received your request prior to the Department of Correction receiving it and forwarding it to this office.

Ms. Safewright addressed the merits of your record request in her July 30, 2005 response. She stated that the information requested is confidential and that the documents will not be provided to you. It is unclear whether the FSSA provided this response to you upon the receipt of your request from this office on July 29, 2005.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied. A public agency may not deny or interfere with the exercise of the right stated in 5-14-3-3(a). IC 5-14-3-3(b). A public agency that denies a written record request must state in writing the exemption or exemptions that authorize the withholding of the record. IC 5-14-3-9(c).

The FSSA is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the FSSA during regular business hours. IC 5-14-3-3(a).

### *Requirement to Respond within Seven (7) Days of Receipt of Request.*

Under the APRA the FSSA is required to respond to your request for records within seven (7) days of receipt of your request. If the Department had received your request and failed to respond within seven (7) days of receipt, then a violation of APRA would have occurred. In this instance the FSSA denies having received your request for records prior to receiving it from this office on July 29, 2005. Since you mis-addressed the mail to the FSSA, it is not surprising that the FSSA denies receiving your request. Because the FSSA did not receive the request prior to July 29, 2005, its obligation to respond within seven (7) days was not triggered under July 29, 2005. Therefore, I cannot find that the FSSA's failure to respond to you prior to that date was a violation of the APRA.

### *Reasonable Particularity*

When any person makes a request for records from a public agency, he must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a). While the phrase "reasonable particularity" appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary meaning. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the state of being particular rather than general." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, 1981, 956.

Statutory interpretation also requires that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991). Since the APRA favors disclosure and the burden of proof for nondisclosure is on the public agency, the agency should contact the requestor for more information if it is necessary to respond to a request.

The FSSA evaluated your complaint and responded that your request was vague because you requested information confirming whether your ex-girlfriend had received "assistance" for your two children. As Ms. Safewright pointed out in her letter, there are several types of benefits

that could be considered “assistance.” She stated that, rather than seek clarification from you as to what information you sought, she would assume that your request was for information about AFDC, TANF, Food Stamps and/or Medicaid (the traditional benefits commonly referred to as “assistance.”) This office has advised agencies on numerous occasions to seek clarification if the request is unclear. In essence, she is seeking clarification by letting you know what assumptions she is making. It is incumbent on you to supplement your request if you are seeking information other than that addressed by the FSSA.

### *Denial of Request for Access to Public Records*

The APRA provides: “The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, 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:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific statutory authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.”

IC 5-14-3-4(a).

It is unclear whether the FSSA has responded to your request since receiving it on August 29, 2005, or whether it provided you with a copy of the July 30th letter. In responding to your complaint the FSSA provided what the response to your record request would have been, had it received your request. The FSSA claimed that the requested records would be confidential in the following ways:

- Food Stamp eligibility records and applications are confidential pursuant to 7 U.S.C. § 2020 and 7 C.F.R. §272.1(c) and federal privacy law, 5 U.S.C. §552(a) et seq.
- Medicaid eligibility information would be confidential pursuant to 42 U.S.C. § 1396a(a)(7), 470 IAC 1-3-1, IC 12-15-27-4 and federal privacy law, 5 U.S.C. §552(a) et seq.
- Children’s Health Insurance Program (CHIP) would be confidential pursuant to IC 12-17.6-9-1, IC 4-1-6 et seq. and 470 IAC 1-3-1, and federal privacy law, 5 U.S.C. §552(a) et seq.
- Temporary Assistance to Needy Families (TANF) contains provisions that limit disclosure of information. 42 U.S.C. § 602 (1)(A)(iv). The information would be confidential pursuant to 470 IAC 1-2-7, IC 4-1-6 et seq., 470 IAC 1-3-1, and federal privacy law, 5 U.S.C. §552(a) et seq. Additionally, the FSSA cites to the prior statutory scheme that was in effect during the time frame for which you requested documents. Those regulations are 42 U.S.C. § 601 et seq., 45 C.F.R. § 201 et seq., and 45 C.F.R. 205.50.

While the FSSA may provide a denial that cites to the statutory provisions under which it claims confidentiality of the records, its denial would have been inappropriate under some of the statutes cited.<sup>1</sup> The burden of proof for sustaining a denial of access to records is upon the public agency. IC 5-14-3-1; IC 5-14-3-9(f).

This office has previously addressed the confidentiality of the FSSA's records regarding the TANF, Medicaid, and Food Stamp programs. *Opinion of the Public Access Counselor 03-FC-93*. In that opinion, this office found that the FSSA could properly withhold from disclosure records of the Medicaid and Food Stamp programs, but had made an improper denial of disclosure of TANF records. Specifically, 42 U.S.C. § 1396a(a)(7) requires states to maintain Medicaid records as confidential in order to participate in the Medicaid program. Where the federal statutory authority is not quite as strong, such as for the TANF program, the FSSA must cite to proper State authority, including statutes and properly adopted administrative rules, to support its denial of records.

The FSSA's denial, however, could not be based upon all of the citations provided. The FSSA has cited the Federal Privacy Act as support for the denial of each type of assistance discussed. 5 U.S.C. §552(a) et seq. While a state agency may claim confidentiality under a federal statute, the federal statute must apply to records held by a state agency. The FSSA would not be able to rely on 5 U.S.C. §552(a) et seq. to deny your record request. The Privacy Act by its terms applies to federal agencies. It does not apply to state agencies, except with respect to social security numbers in narrow circumstances.

Furthermore, the FSSA has cited the Fair Information Practices Act ("FIPA"), IC 4-1-6 et seq., for the proposition that its records are confidential. To clear up any confusion, FIPA does not confer confidentiality on any record. FIPA sets out guidelines for the use, maintenance, and intra-agency exchange of records regarding personal information in a "personal information system." While FIPA provides for the secure handling of confidential information, it does not specifically declare a record confidential. The confidentiality of the records must be established by some other statutory authority.

Additionally, the FSSA has cited to several administrative rules as authority for withholding the requested records. Where a state agency wishes to rely on a rule declaring a record confidential, it must show that the agency had specific authority to classify public records as confidential granted to the agency by statute. IC 5-14-3-4(a)(2). If the FSSA's rules were properly adopted according to specific statutory authority to classify public records as confidential, then the agency may rely on the cited rules in its denial of the records you seek. A brief review of the rules cited by the FSSA tends to show reliance upon general rulemaking authority rather than the specific statutory authority required by the APRA.

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<sup>1</sup> The FSSA provided in its response to your complaint a summary of what would have been its response to your request, had it been received. The FSSA would have been required to issue its denial in writing, with citation to the specific exemption authorizing the agency to withhold the record. IC 5-14-3-9(c). However, the Office of the Public Access Counselor would request that agencies provide more specific citation when responding to complaints filed with this office. For example, not all federal statutes apply to state agencies. When responding to a formal complaint, agencies should address the applicability of the statute upon which the agency would rely in its denial. Where an agency intends to rely upon an administrative rule it would be advisable to provide the statutory cite that provides the required rulemaking authority.

Finally, I will note that had the FSSA provided, as a response to your request, only the information provided in its response to the complaint, it would have been advisable to include the appropriate APRA citations in its denial. At a minimum, it should indicate whether the relied upon citations come into play under IC 5-14-3-4(a) (1), (2) or (3), or any other provision of section 4 of the APRA.

#### CONCLUSION

For the foregoing reasons, I find that the Family and Social Services Administration did not violate the Access to Public Records Act when it did not respond to your request for records prior to July 29, 2005, the date upon which it received your request. I also opine that its complaint response adequately demonstrated that the Food Stamp and Medicaid records are confidential under at least one of the authorities cited for those programs. Hence, you are not entitled to confidential records under the Food Stamp program or Medicaid. The FSSA has not sustained its burden of proof to show that TANF records are nondisclosable.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Deniece Rogers Safewright