



STATE OF INDIANA

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November 21, 2012

Mr. Demetreous A. Brown, Sr.
Reg. No: 07860-028
F.C.I. Ashland
P.O. Box 6001
Ashland, Kentucky, 41105

Re: Formal Complaint 12-FC-318; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Child Services (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Linda Nearing, Assistant Deputy Director, responded in writing on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on September 5, 2012, you submitted to the Department a written request for copies of the following records:

- Any form(s) encompassed by Title 45, section 303.70, subsection (c) of the Code of Federal Regulations in regards to the Parent Locator Service; and
- Any official memoranda, notices, etc., that may have been issued in regards to “custodial parents” being included in the State Plan Requirements for the State Parent Locator Service, pursuant to 45 C.F.R. § 301.1, §302.35(a)(1), and § 302.35(2)(i).

On September 18, 2012, Ms. Terrah Nunley responded in writing on behalf of the Department and acknowledged the receipt of your request. Ms. Nunley advised that it would be approximately two weeks before the Department could issue a formal response to your request. On October 2, 2012, Ms. Nunley provided a formal response to your request, which provided, in part:

“While working to answer your request, we have to assume that you are a Non-Custodial Parent looking to locate a Custodial Party through the State Parent Locator Service. However, under 45 C.F.R. 302.35, access to the State Parent Locator Service may be requested only by the “resident parent, legal guardian, attorney, or agency of a child.” The mechanism by which to request such access is by completing an application for Title IV-D services which can be found at <http://www.in.gov/dcs.2936.htm>. While a Non-Custodial parent may apply for IV-D services to seek assistance in establishing paternity, child support and medical insurance coverage and enforcement of the same, a Non-Custodial parent cannot apply for Title IV-D services for the locate only service.”

You provide that the Department violated the APRA by constructively denying your request for records as you are currently incarcerated and do not have access to the internet.

In response to your formal complaint, Ms. Nearing advised that the Department’s response to your request was based on its belief that you were a noncustodial parent seeking assistance in locating the custodial parent of your child. The Department in its response attempted to explain the services offered in this area by the Indiana Child Support Bureau and that it was not permitted by federal law to provide this type of service to noncustodial parents. Since the Department was unaware of what type of records or assistance that you were seeking, you were also directed to the federal Office of Child Support Enforcement for further information and for an application to the Title IV-D Child Support Program. The Department was unaware that you did not have access to the internet. To the best of Ms. Nearing’s knowledge, the Department does not maintain any records that are responsive to your request other than the Application for Title IV-D Child Support Services, a copy of which is enclosed.

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 Department 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 Department’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 by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Again, section 9(b) requires that the agency respond within seven (7) days of the receipt of the request; not seven (7) days from when the request was mailed. 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. 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 of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Department has provided that the only record that is responsive to your request is a copy of the Application for Title IV-D Child Support Services, a copy of which is enclosed. As the Department immediately upon being notified that you did not have access to this information via the internet, provided you with copies of all records that were responsive, timely acknowledged the receipt of your request under section 9 of the APRA, and provided a final response approximately two weeks after receiving your initial request, it is my opinion that the Department complied with the requirements of the APRA in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Linda Nearing