



STATE OF INDIANA

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April 9, 2014

Ms. Laura E. Landenwich, Esq.
462 South Fourth St., Suite 101
Louisville, KY 40202

Re: Formal Complaint 14-FC-53; Alleged Violation of the Access to Public Records Act by Indiana Adult Protective Services

Dear Ms. Landenwich,

This advisory opinion is in response to your formal complaint alleging the Indiana Adult Protective Services, a Division of the Indiana Family and Social Services Administration (“APS”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* The APS has provided a response to your complaint via Mr. Steven D. Stewart, Esq., Clark County Prosecutor. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 14, 2014.¹

BACKGROUND

Your complaint dated March 11, 2014 alleges Indiana Adult Protective Services violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

Your public records request, dated February 4, 2014, seeks information relating to an investigation into the passing of an adult residing in a long-term care facility. You represent the mother of the deceased. Indiana Adult Protective Services is a division of the Indiana Family and Social Services Administration. As it is a criminal justice initiative regulating adults in long-term care facilities, APS investigators work out of county prosecutor’s offices. Therefore, the Clark County Prosecutor has responded to your complaint. Clark County is in Unit 14 of the APS, which includes Floyd County and New Albany where the facility in question is located.

¹ Your complaint has not been given priority status as requested, as it does not state a reason for an expedited opinion in your narrative. See 62 IAC 1-1-3.

The Clark County Prosecutor responded to your request stating Unit 14 was unable to locate any records responsive to your request. The response was signed by the Prosecutor as well as the APS field Investigator.

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 Ind. Code § 5-14-3-1. Indiana Adult Protective Services is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the APS’ public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It appears APS did not acknowledge your request until after your formal complaint was filed. Your request was deemed denied after seven days, however, pursuant to Ind. Code § 5-14-3-9(d), a denial of a written request must also be in writing and the justification for the denial and the name of the person denying the request. This did not happen until approximately six weeks after your request. While there is no violation of the APRA for not producing records which do not exist, a public agency is still bound by the APRA to justify its denial. Given the decentralized structure of APS, I would encourage them to develop a practical policy for responding to public records requests in a timely manner.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor Indiana Adult Protective Services has not violated the Access to Public Records Act by failing to produce records, but is in technical violation of the APRA under Ind. Code § 5-14-3-9(d) for failing to state the justification for the non-disclosure in writing in a timely manner.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Steven D. Stewart, Esq.