
OPINION OF THE PUBLIC ACCESS COUNSELOR

CHRIS S. NARDI,
Complainant,

v.

INDIANA STATE DEPT. OF HEALTH,
Respondent.

Formal Complaint No.
20-FC-51

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Department of Health violated the Access to Public Records Act.¹ ISDH Chief Legal Counsel Kelly Mackinnon filed an answer to the complaint with this office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on April 13, 2020.

BACKGROUND

This case involves a dispute over the access to data collected by the Indiana State Department of Health (ISDH) that illustrates the ability of individual hospitals to contribute to the State's response to the COVID-19 pandemic.

On March 25, 2020, Chris S. Nardi (Complainant) filed a public records request with ISDH seeking the following:

“Copies of any [EMResource]² reports generated in the past week in addition to the current report, if available.”

On April 1, 2020, ISDH denied Nardi's request. ISDH asserted that the requested records contain financial information that is not required to be submitted pursuant to a state statute; and thus, the records were exempt from disclosure pursuant to Indiana Code section 5-14-3-4(a)(5).

Nardi contends that the EMResource documents do not qualify as financial information because the number of beds, ventilators, masks, and other resources that each hospital has does not expose monetary information of health care providers. Nardi also contends that if there was any confidential information included with the reports sent to ISDH, then it would be the responsibility of ISDH, under Indiana

² From <https://www.in.gov/isdh/25864.htm>: EMResource is a web-based resource management and communication tool developed by Juvare. EMResource is used by healthcare, public health, first responders, and other healthcare and government agencies. This system is utilized to monitor and notify changes in resources statuses such as diversions, EOC activations, resource availability, and other information.

Code section 5-14-3-6(a), to redact that information rather than simply withholding the records all together.

On May 4, 2020, ISDH filed an answer to Nardi's complaint. First, the agency maintains that in response to the COVID-19 pandemic hospitals chose to submit their EMResource information, in order to help ISDH make resource allocation decisions and to monitor the State's capacity to care for individuals sick with COVID-19.

Second, ISDH argues that assets reported in the EMResource database are part of the overall financial value of a hospital; and thus, the agency considered the materials to be proprietary information about hospitals' business operations that is not meant to be shared with the public. Consequently, if the EMResource data is not required to be submitted by state statute and the data is classified as financial information, Indiana Code section 5-14-3-4(a)(5) permits a public agency to exempt those records from disclosure.

Finally, ISDH notes its desire to balance the public's right to information with its responsibility to protect proprietary information. So, in an attempt to maintain that balance, ISDH chose to publish certain information on its website so the public can see the overall resources available to the State as it continues to take steps toward treating those infected with COVID-19 and slowing the spread of the virus.

Specifically, ISDH created a dashboard that includes the percentage of ICU beds and ventilators in use for COVID; in use for non-COVID patients; and those that are available." ISDH did note that at the time Nardi made his request, the aggregate – but not individual hospital - information contained on the dashboard was not available. However, ISDH

sent him a link to the information when responding to a different records request, which Nardi filed after he submitted his complaint with this office.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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. The Indiana State Department of Health (ISDH) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the ISDH’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Nardi’s request

It is unclear whether the release of aggregate data from ISDH satisfied Nardi’s request, however, this opinion will

address the matter as if he still requests individual hospital data.

ISDH's denial is predicated on Indiana Code section 5-14-3-4(a)(5), which makes the following information confidential:

Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

Nothing in the information provided, or in the course of this office's investigation, indicates hospitals are required to submit to the EMResource database. While it may be used systematically, the preparedness resource tool appears to be voluntary and information is submitted on an as-needed basis and, at least in this context, for no other regulatory purpose.

Furthermore, as noted in ISDH's response, Indiana Code section 5-14-3-4(a)(5) prohibits the disclosure of confidential financial information as proprietary. This term is not defined in statute or case law, however, in the *Opinion of the Public Access Counselor*, 03-FC-56, acting public access counselor Susan K. Barger opined:

The word 'confidential' is defined as 'imparted in confidence, secret.' New Illustrated Webster's Dictionary 211(1992). 'Financial' is defined as 'of or relating to finance.' Id. at 364. Therefore, 'confidential financial information' means information that is secret relating to finance.

This analysis has been used by subsequent Public Access Counselors and I see no reason to deviate from that conclusion.

Toward that end, inventory in general is an asset included in many private companies' balance sheets. It is very much an item that can be categorized as part of a hospital's finances and business and commerce operations.

Normally, there would be no reason to report this specific information to a regulatory authority. It was presumably provided as part of ISDH's epidemiological efforts in light of the COVID-19 event.

Had it not been for ISDH already doing so, my recommendation would have been to provide the aggregate data, if reasonable efforts could effectuate creation of a document with that information. Seeing as how the agency has already done so, this matter appears to be closed.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Department of Health has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor