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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DAVID JOSE,  
*Complainant,*

v.

INDIANA DEPARTMENT OF ADMINISTRATION,  
*Respondent.*

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Formal Complaint No.  
24-FC-51

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Administration (“IDOA”) violated the Access to Public Records Act.<sup>1</sup> General Counsel John D. Snethen filed a response on behalf of IDOA. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 16, 2024.

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<sup>1</sup> Ind. Code § 5-14-3-1 to 10.

## **BACKGROUND**

This case involves a dispute over access to records related to documents received pursuant to a request for proposals (RFP) issued by the Indiana Department of Administration (IDOA).

On March 5, 2024, David Jose, complainant and attorney for the Indiana Council of Community Mental Health Centers, Inc., submitted a public records request to IDOA for results of an evaluation of applicants for a program through the Family and Social Services Administration.

The Award Letter sent to successful applicants references an evaluation process. Jose seeks all applicants' scoring results under that process which includes Business and Technical Proposal and Management Assessment/Quality portions of the RFP.

Jose filed the formal complaint on July 16, 2024.

For its part, IDOA submitted its response to the formal complaint arguing that the process is deliberative and subjective, and materials may be withheld as such.

## **ANALYSIS**

The primary issue in this case is whether the evaluator scoring records qualify as deliberative materials under the Access to Public Records Act. This issue has been addressed several times in the past, but occasionally it is important to revisit an issue and any relevant statutory or case law to ensure fidelity to the law.

### **1. The Access to Public Records Act (“APRA”)**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.5-1.

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.” *Id.* The Indiana Department of Administration is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the IDOA’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Under APRA, “public record” means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the records requested by Jose are public records for purposes of APRA. Although public records are presumptively disclosable, APRA contains both

mandatory and discretionary exceptions to the general rule of disclosure.<sup>2</sup>

This case involves the applicability of one of APRA's discretionary exceptions to disclosure: the deliberative materials exception.

## **2. APRA's Deliberative Materials Exception**

The crux of this dispute is whether APRA's deliberative materials exception applies to the scoring records requested by the complainant.

APRA gives a public agency discretion to deny disclosure to the following:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Ind. Code § 5-14-3-4(b)(6). Here, the IDOA denied materials used in the scoring of the subject RFP citing the deliberative materials exception.

This office has indeed posited that raw data or numbers will rarely qualify as deliberative material, especially in the aggregate. That is a contextual determination, however. Methodology, formulation and procedures used in decision making are part of the deliberative process. To the extent

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<sup>2</sup> Ind. Code § 5-14-3-4(a) and (b).

IDOA relies on the evaluations as part of its systemic appraisal of bids – which appears to be the case – the valuations can be deliberative and meet the definition of the statutory exemption.

This is especially so given the underlying statutes governing the process, giving IDOA some subjective discretion in how it determines awards.

The scoring and tabulation are inherently speculative and based upon the subjective estimates and determinations of individual assessors. Those determinations are part of the decision-making process. Therefore, the materials in question are deliberative. Given that there is no new case law or statutory amendments affecting this issue, this opinion is consistent with prior Public Access Counselor guidance and the plain reading of the law.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Indiana Department of Administration did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Issued: September 30, 2024