



STATE OF INDIANA

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September 28, 2010

Mr. Jeff Lozer, Esq.
General Counsel, Indiana Department of Child Services
302 W. Washington Street
Room E306
Indianapolis, IN 46204

*Re: Informal Inquiry 10-INF-44: Request for Access to Residential
Child Care Cost Reports*

Dear Mr. Lozer:

This is in response to your informal inquiry regarding the Midwest Center for Youth and Families' (the "Center") public records request dated September 13, 2010, to the Indiana Department of Child Services ("DCS"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA").

The Center's request sought "accesss to and copies of Indiana Title IV-E Residential Care Cost Reports for all Residential Child Caring ("RCC") facility [sic] that have submitted reports for the Reporting Periods 2008 and 2009." The request also requested a "fee waiver" for costs associated with the response.

Title IV-E is a subpart of Title IV of the federal Social Security Act. This program provides federal reimbursement to states for the costs of children placed in foster homes or other types of out-of-home care under a court order or voluntary placement agreement. Title IV-E benefits are an individual entitlement for qualified children who have been removed from their homes. The Residential Child Care Cost Report (the "Cost Report") is one part of a two-part process established by DCS to fulfill requirements for determining allowable Title IV-E costs for federal reimbursement. The other part of the process involves participation in the Random Moment Sampling (RMS) Time Study. The combination of information obtained from the Cost Report and random moment sampling are used to establish rates for the reimbursement of Title IV-E eligible costs for Title IV-E eligible children placed in Title IV-E eligible facilities.

In order to establish an Indiana Title IV-E Claimable Rate, participation in the Residential Child Care Facility RMS and completion of the Cost Report are requirements

for all Indiana operators of public and private child caring institutions, group homes, emergency shelters, and private secure care facilities. No Indiana statute requires a facility to file a Cost Report.

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." Ind. Code § 5-14-3-1. DCS is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy DCS' public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Certain information and records are excepted from the disclosure requirements of section 3 of the APRA 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. One such category of classified information is "[c]onfidential 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." I.C. § 5-14-3-4(a).

Under the APRA, a "person" is an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity. I.C. § 5-14-3-2(j). However, the phrase "[c]onfidential financial information" is not defined in the APRA. In *Opinion of the Public Access Counselor 03-FC-56*, this office analyzed the meaning of the confidential financial information exception based on the plain meaning of the words. "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." *Id.*

The Cost Reports contain detailed financial information concerning the facilities' personnel expenses, contracted services, operational costs, occupancy costs, insurance costs, travel costs, equipment costs, and revenue. The facilities operate in a highly competitive environment. The financial information contained in the Cost Reports is not readily ascertainable from another source and the facilities make reasonable efforts to keep such information confidential. Consequently, it is my opinion that the financial information in the Cost Reports is confidential financial information under subsection 4(a)(5) of the APRA.

Even so, if the information were "filed with or received by [DCS] pursuant to state statute," it should be disclosed. I.C. § 5-14-3-4(a)(5). However, I am aware of no statute that requires the facilities to submit the Cost Reports. I am also not aware of any administrative rules or regulations that require submission of the Cost Reports, but even if there were such a rule or regulation the public access counselor has opined that rules and regulations do not transform otherwise confidential financial information into disclosable information:

[I]t is my opinion that confidential records submitted to the Department based upon administrative rules may be withheld from disclosure. It is my opinion that if the general assembly had intended for confidential information submitted pursuant to administrative rules to be released then the general assembly would have stated that confidential financial information submitted by a person must be withheld except for information filed pursuant to *state law*. Since the general assembly did not do so it is my opinion that only information required to be submitted by state statute, and not administrative rules, must be provided upon request.

Opinion of the Public Access Counselor 03-FC-59. I agree with this reasoning and see no reason to depart from it here. In my opinion, the financial information in the Cost Reports cannot be released because it is confidential under I.C. § 5-14-3-4(a)(5).

Finally, I note that the public access counselor has repeatedly stated that a public agency does not violate the APRA by refusing to waive copy fees allowed by statute. *See, e.g., Opinion of the Public Access Counselor 03-FC-17.*

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor