



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2765

Telephone: (317) 232-2513

Fax: (317) 232-4711

Web Site: www.in.gov/sboa

STATE EXAMINER DIRECTIVE 2015-3

EFFECTIVE DATE: February 26, 2015

GENERAL SUBJECT: 100R Personnel Form, Executive Officers' Annual Report to State Board of Accounts

AUTHORITY: IC 5-11-1, IC 5-11-13, IC 35-44.2-1-6, IC 35-44.2-1-7, Attorney General Advisory Letter #13-31 dated August 5, 2014 (copy attached, hereafter referred to as "Adv. Ltr. #13-31")

APPLICATION: This Directive applies to all executive officers of county and city hospitals (each an "Executive Officer").

FROM: Paul D. Joyce, CPA, State Examiner

An Executive Officer of a county hospital established under Ind. Code Art. 16-22 and an Executive Officer of a municipal hospital established under Ind. Code Art. 16-23 shall file the certified report ("100R Personnel Form" or "Report") as set forth in Ind. Code § 5-11-13-1.

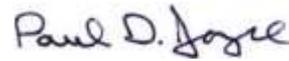
If an Executive Officer believes that the compensation of an officer, employee, or agent identified in the Report is information that is proprietary and competitive as set forth in Adv. Ltr. #13-31, the Executive Officer shall file the Report due in 2015 with the State Examiner in paper form (by certified or registered mail) containing all information required by Ind. Code § 5-11-13-1. The Report filed in paper form shall include a letter or other written document signed by the Executive Officer setting forth the names of the officers, employees, or agents whose compensation the Executive Officer believes is proprietary and confidential information, the reason that the Executive Officer believes that the compensation for each officer, employee, or agent whose compensation is proprietary or confidential information as set forth in Adv. Ltr. #13-31, and requesting that the State Examiner accept the paper Report in lieu of an electronically-filed Report.

State Examiner Directive 2015-3
February 26, 2015
Page Two

The State Examiner will review the materials submitted by the Executive Officer and determine whether the paper Report complies with the requirements of Ind. Code § 5-11-13-1 and Adv. Ltr. #13-31 and inform the Executive Officer of his determination. If the State Examiner accepts the paper Report, the paper Report shall be deemed to have met the requirements of Ind. Code § 5-11-13-1.

The State Examiner may use the Report filed in paper form for any purpose contemplated by Ind. Code Art. 5-11, but proprietary and competitive compensation information will be protected from public disclosure.

This Directive may be amended from time to time and may be rescinded at any time in writing by the State Examiner or a Deputy State Examiner.


Paul D. Joyce, CPA
State Examiner



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

TELEPHONE: 317.232.6201
FAX: 317.232.7979

GREG ZOELLER
INDIANA ATTORNEY GENERAL

August 5, 2014

Privileged and Confidential
Attorney-Client Communications
Advisory Letter #13-31

Paul Lottes
General Counsel
Indiana State Board of Accounts
302 W. Washington Street, Room E418
Indianapolis, IN 46204

Dear Paul:

Recently you requested an advisory opinion from our office regarding the following questions:

- 1) Do the filing requirements for 100R personnel forms provided under Ind. Code Chapter 5-11-13 apply to county hospitals?
- 2) If county hospitals are required to adhere to the filing requirements for 100R personnel forms provided under I.C. § 5-11-13, would the compensation data included in the form be protected from public disclosure under the Indiana Access to Public Records Act?

BRIEF ANSWERS

- 1) The application language of I.C. § 5-11-13-1 includes county hospitals, and therefore, county hospitals are required to adhere to the filing requirements for 100R personnel forms.
- 2) A Public Access Counselor Advisory Opinion was issued on March 25, 2010, which dealt with a county hospital public records request and ultimately determined that salary information for county hospital employees would be considered "proprietary and confidential" under I.C. § 16-22-2.5-2 and therefore protected by I.C. § 5-14-3-4(a). Although this opinion did not consider 100R personnel forms as described under I.C. § 5-11-13, it appears the Public Access Counselor would apply the same analysis to the present inquiry. Consistent with the deference policy of the Office of the Attorney General, we would defer to this conclusion. However, we would also point out a few relevant considerations regarding the public record disclosure requirements and the intended purpose of personnel reports, which are detailed in the analysis below.

ANALYSIS

Executive Officers' Annual Report to State Board of Accounts – I.C. § 5-11-13

Consistent with the accounting requirements for public funds, the State Board of Accounts requires that certain executive officers complete and submit personnel forms that include the names, business addresses, and compensation of all employees (“100R Personnel Form”).¹ With specific attention to county personnel, the provisions in I.C. § 5-11-13-1(a) require that all of the following complete a 100R Personnel Form:

- (1) Every county official, elective or appointive, who is in charge of any office, department, board, or commission of any county;
- (2) Every county employee or agent who is in charge of any department, bureau, board or commission of the county; and
- (3) Every executive officer who is in charge of *any county institution*. (emphasis added)

Based on this list provided under I.C. § 5-11-13-1(a), county hospitals are required to complete the 100R Personnel Forms and submit them to the State Board of Accounts by January 31 of each year. Although not expressly identified in the statute, the executive officer of a county hospital is required to complete the required 100R Personnel Forms under the third subsection listed above as he or she is in charge of a “county institution.” As included in the definitions available under I.C. § 16-18-2-179, “hospital” is defined as “*an institution*, a place, a building, or an agency that holds out to the general public that it is operated for hospital purposes and that it provides care, accommodations, facilities, and equipment, in connection with the services of a physician, to individuals who may need medical or surgical services.”²

Additionally, the definitions regarding accounting for public funds which are included in I.C. § 5-11-1-16 state that a “public hospital” is “[a]n institution licensed under IC 16-21 and which is owned by the state or an agency of the state or one which is a municipal corporation.” A hospital is considered a “municipal corporation” if “its governing board members are appointed by elected officials of a municipality.”³ This definition indicates that county hospitals would be considered a “municipal corporation” based on the fact that pursuant to I.C. § 16-22-2-2, county executives appoint the board members for the hospital.

As a point of clarification, the language in I.C. § 5-11-13-1.1 does not limit the requirements under Chapter 13⁴ to apply only to a unit. Section 1.1 includes additional requirements for the executive

¹ I.C. § 5-11-13-1; *See also* I.C. § 5-11-13-1.1 which requires units to also include a statement by the executive officer regarding whether the unit has implemented a policy under IC 36-1-20.2 and IC 36-1-21.

² I.C. § 16-18-2-179(b)(emphasis added).

³ I.C. § 5-11-1-16(f).

⁴ Chapter 13 includes provisions regarding executive officers' annual reports to the State Board of Accounts.

officer of a unit when he or she submits annual reports to the State Board of Accounts.⁵ Although I.C. § 5-11-13-1.1 does apply specifically to units, this section does not limit the scope of the other provisions under Chapter 13 detailing the reporting requirements for 100R Personnel Forms. More specifically, the statute states that “this section [1.1] applies to a unit (defined in IC 36-1-2-23).”

Indiana Access to Public Records Act

Under I.C. § 5-14-3-2(n) county hospitals would be considered a “public agency” and are therefore subject to the obligations of the Indiana Access to Public Records Act.⁶ Within the Indiana Access to Public Records Act the legislature has provided that 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.⁷ Subsection (a) of I.C. § 5-14-3-4 provides a list of records that are excepted from the general disclosure requirements 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. In addition to these exceptions, subsection (b) includes a list of records that may be excluded from disclosure at the discretion of a public agency.⁸ As provided by Ind. Code Chapter 5-14-4, the office of Public Access Counselor has been established to provide advice and assistance concerning Indiana’s public access laws to the members of the public, as well as government officials and their employees.

On March 25, 2010, the Indiana Public Access Counselor issued Advisory Opinion 10-FC-49 in response to an alleged violation of the Access to Public Records Act by the Morgan County Hospital and Medical Center. The analysis provided within this opinion considered the public’s ability to access information regarding county hospitals including the salary information for its employees, as well as the employment contract for its Chief Executive Officer and President. Ultimately, the Public Access Counselor determined that information regarding an employee’s salary could be withheld by a county hospital without violating the Access to Public Records Act. This decision was based on the protections provided under I.C. § 16-22-2.5-2, which states that a hospital may withhold information that is “proprietary and competitive.” The Public Access Counselor concluded that employee salary information could be characterized as proprietary and competitive. Although this Advisory Opinion did not consider the accounting requirements for public funds as detailed in I.C. § 5-11-13, a similar analysis would likely be applied to the present inquiry regarding county hospitals and 100R Personnel Forms.

The Office of Attorney General maintains a policy of deference to the opinions of the Public Access Counselor regarding questions about application of the Access to Public Records Act and the Open Door Law. Consistent with this deference policy, our office defers to the analysis from 10-FC-49 and supports the Public Access Counselor’s conclusions in this context. Additionally, we would also point out a few relevant considerations regarding the public records disclosure requirements, as well as the overall purpose of public access to personnel reports, in relation to the question about public

⁵ I.C. § 5-11-13-1.1.

⁶ I.C. § 5-14-3-2(n) provides that an entity or office that is subject to an audit by the State Board of Accounts is considered a “public agency.” Under I.C. § 16-22-3-12, all county hospitals are subject to an audit by the State Board of Accounts.

⁷ I.C. § 5-14-3-1.

⁸ I.C. § 5-14-3-4(b).

access to county hospital personnel reports. While the Access to Public Records Act does prohibit the disclosure of certain public records for certain reasons, including the protection of trade secrets or the confidentiality of personal financial information, the statute also states that this prohibition does *not* apply when “access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery.”⁹ Pursuant to Ind. Code Chapter 5-11-13, the State Board of Accounts has been granted access to the records/information that is required under the 100R Personnel Forms. Additionally, even though subsection (b) states that a public agency shall have the discretion regarding whether or not it will disclose records related to “personnel files of public employees”, the public agency does *not* have this discretion when the employment information requested is “the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers of employees of the agency.”¹⁰

Public agencies have obligations to disclose portions of records that are not excepted from disclosure under the Act while redacting those portions that are required to be kept confidential or that may be kept confidential. If such redactions are made consistent with the above referenced opinion regarding classification of salary information as “proprietary and competitive”, it could be noted that redacting salary information would essentially eliminate any intended public benefit of accessing the 100R Personnel Form. Given the limited scope of the information included in a 100R Personnel Form,¹¹ redacting or withholding compensation information for county hospital employees would leave the public with a report that only includes the names and business addresses of county hospital employees. Furthermore, the State Board of Accounts is required under I.C. § 5-11-13-2 to keep all reports regarding the accounting of public funds open to the public.

Although it is not entirely dispositive of a statute’s purpose, there may also be a consideration of the legislative intent behind the bill that created the protections available to hospital information under I.C. § 16-22-2.5-2. This statute was added to the Indiana Code in 2006 under Public Law 125-2006, Section 4, as enacted by House Enrolled Act 1101. While the present issue simply may not have been anticipated by the legislature, the scope of House Bill 1101 was focused on the necessary protection of consumers from security breaches and identity fraud that could result from the release of person information. Nonetheless, the conclusions in 10-FC-49 were clear and no subsequent opinions have reconsidered or cast doubt on the findings in the 2010 opinion.

CONCLUSION

The requirements for accounting of public funds provided under I.C. § 5-11-13 apply to county hospitals and therefore the executive officers of county hospitals are required to complete and submit 100R Personnel Forms. While the Public Access Counselor would likely apply a previous analysis to the present inquiry and our office would generally defer to such analysis, there are

⁹ I.C. § 5-14-3-4(a).

¹⁰ I.C. § 5-14-3-4(b)(8).

¹¹ The 100R Personnel Forms primarily require the names, business addresses, and compensation of all employees. Additional information is required for all units, as well as counties, cities, towns, and townships. For more detailed information and a copy of the current 100R Personnel Form, please visit <http://www.in.gov/sboa/3923.htm>.

Mr. Paul Lottes
August 5, 2014
Page 5 of 5

additional considerations regarding the public record disclosure requirements and intended public benefit of personnel reports that should be considered when reviewing the authority of the State Board of Accounts to require that county hospitals complete 100R Personnel Forms.

I hope this analysis is responsive to your inquiry. Please advise should you need anything further in this regard.

Sincerely,

A handwritten signature in cursive script that reads "Matt Light".

Matt Light
Chief Deputy