



STATE OF INDIANA

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June 8, 2012

Mr. Gabriel Harden
611 N. Capitol Avenue
Indianapolis, Indiana 46204

Re: Formal Complaint 12-FC-138; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Administration

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the Indiana Family and Social Services Administration ("FSSA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Brandon Shirley, Deputy General Counsel, responded on behalf of the FSSA. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on March 15, 2012 you submitted a request for public records to the FSSA via certified mail. On April 19, 2012, you issued "an At Fault letter to the FSSA which informed them they had three (3) days from receipt of notice to cure the default." On May 8, 2012, after not receiving any response from the FSSA, you issued a Default Notice. You provide that the process has been going on for two (2) years and you have never received the requested documents.

In response to your formal complaint, Mr. Shirley provided a brief history regarding your alleged request submitted to the FSSA. On August 10, 2010, you submitted an APRA request to Hewlett Packard ("HP") which is the FSSA's fiscal agent. On August 24, 2010, HP acknowledged receipt of your request and provided that a response would be issued in twenty (20) days. On October 20, 2010, you inquired with HP regarding your request. On January 31, 2011, Kristina Morehead, Deputy Director at OMPP informed you in writing that the records were not discloseable under the APRA without proper authorization or court order citing privacy law concerns. On February 16, 2011, you submitted correspondence to the FSSA clarifying your request to alleviate such privacy concerns. On March 9, 2011, FSSA mailed their initial response to your request. On April 11, 2011, FSSA mailed the requested information to you on a compact disc to the address that you had provided them. The CD was mailed to a Federal Detention Center in Miami. The CD was returned, marked with a Post Office return to sender stamp, and a generic prison stamp listing several deficiencies.

On August 29, 2011, you requested a status on your request to which the FSSA responded that a copy of the CD had previously been sent to you and was returned. On September 29, 2011, you submitted correspondence to the FSSA alleging that it was in violation of the APRA. On October 13, 2011, FSSA sent you another letter informing you again that the FSSA had attempted to provide you with the records to the address you provided, however it was returned. On December 8, 2011, March 15, 2011, and May 8, 2012 you sent letters to the FSSA claiming that it violated the APRA and demanded millions of dollars in damages. At that time you filed a complaint in the Southern District of Indiana Federal Court alleging FSSA violated the Freedom of Information Act and the APRA and demanded \$8 million dollars in damages. The complaint was dismissed for failure to state a plausible basis for the damages and on jurisdictional grounds.

Mr. Shirley provides that as an initial matter, contrary to the allegation in your complaint, the March 15, 2011 correspondence was not a request for records pursuant to the APRA. The request does not identify with reasonable particularity the records being requested. In fact it does not identify any records at all. In provides what you refer to as an ‘appeal from the denial of records.’ Further, the FSSA did not improperly withhold documentation as it attempted to provide it to you at the address you provided. Finally, previous opinions of the Public Access Counselor had concluded that a public agency acts reasonably when it simply mails its response to the address provided by the individual. *See Opinion of the Public Access Counselor 10-FC-279.*

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 I.C. § 5-14-3-1.* The FSSA is a public agency for the purposes of the APRA. *See I.C. § 5-14-3-2.* Accordingly, any person has the right to inspect and copy the FSSA’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See I.C. § 5-14-3-3(a).*

As an initial matter, I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the denial. *See I.C. § 5-14-5-7.* As provided by FSSA, your original request for records dates back to August 10, 2010. The FSSA provided all records responsive to your request on April 11, 2011 via U.S. Mail to the address on record which you had provided. The records were returned to FSSA from the U.S. Postal Service, which included a return to sender stamp and generic prison stamp. On August 29, 2011, you inquired regarding the status of your request to which the FSSA responded that the records had been sent and were returned as undeliverable. You were informed again of this fact on October 13, 2011. From all the information provided by you and the FSSA, at no time did you provide the FSSA with a new address to send the records. As you were informed of FSSA response and action regarding your request as far back as April 2011, it is my opinion that your formal complaint filed now is untimely as it has occurred

more than thirty (30) days after the alleged denial. As such, your formal complaint is dismissed pursuant to I.C. § 5-14-5-7.

Regardless of I.C. § 5-14-5-7, it is my opinion that the FSSA did not violate the APRA in responding to your alleged requests submitted on March 15, 2012, April 19, 2012, and May 8, 2012, as the plain language of the correspondence cannot be deemed as a “request”. Your March 15, 2012 correspondence is described as an “appeal”. Your April 19, 2012 correspondence is an “at fault notice.” Your May 8, 2012 correspondence is titled “Harden’s Exhibit List”. The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.

It is my opinion that the alleged “requests” submitted to FSSA in 2012 cannot be construed as requests for records and are more aptly described as grievances you have with FSSA in regards to your August 10, 2010 request that the FSSA attempted to provide to you in 2011.

Further, the FSSA attempted to provide you with the records that you have sought, but the information was returned as undeliverable. The FSSA used the address that you provided to them and there is no indication that you ever submitted a new address to the agency. Thus, it is my opinion that the FSSA acted reasonably by attempting to provide you with records at the address you have provided. *See Opinion of the Public Access Counselor 10-FC-279 and 10-FC-281*. In the future, if you have a pending request with an agency and your address changes, you should notify the agency of said change.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Brandon Shirley