



STATE OF INDIANA

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November 19, 2013

Mr. Robert T. Nicholson
910 Euclid Avenue
Marion, IN 46952

Re: Formal Complaint 13-FC-310; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Administration

Dear Mr. Nicholson,

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.* Ms. Kimberly Crawford, Esq., Staff Attorney, responded to your formal complaint. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 22, 2013.

BACKGROUND

Your complaint dated October 22, 2013 alleges the Indiana Family and Social Services Administration violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

On or about September 24, 2013 you served upon the FSSA a request for production of records for information relating to your mother. On September 30, 2013, the FSSA timely acknowledged your request upon receipt and then denied production of the records based upon Federal and State privacy statutes. However, you indicated you were previously certified by the FSSA to act on your mother's behalf in matters involving the FSSA.

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 Ind. Code § 5-14-3-1. The Indiana Family and Social Services Administration is a public

agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the FSSA's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

FSSA is correct in their assertion that confidential records are excluded from disclosure under the APRA. This not only applies to the exceptions under Section (4) of the statute, but also defers to other State and Federal confidentiality provisions. See Ind. Code § 5-14-3-3(a)(1-3). I have reviewed the Code of Federal Regulations and the Indiana Code statutes addressing personal health and social benefits information and have concluded the FSSA was justified in deeming the information you seek as confidential.

However, I do not consider the privacy issues as the substantive matter at hand. This matter appears to be a matter of fact and not a matter of law. And although the Public Access Counselor is not a finder of fact, I have been provided an adequate amount of information to make a determination.

Again, you indicated in your September 24, 2013 request you were an authorized individual to gather information as to your mother's affairs. You identified yourself as Robert Nicholson. FSSA denied your request as they had nothing on file that confirmed your assertion. After the filing of your complaint, I have been advised that FSSA furthered the investigation and discovered your mother's authorized representative was either another individual or yourself using a different, but similar name.

Furthermore, the FSSA determined this individual was the authorized representative for your mother's affairs *only when she was alive*. As she is deceased, the individual no longer has authority to gather the information you seek. FSSA cannot release the information of a decedent without specific designation of another individual to do so.

You may very well have the court-appointed authority to gather the information through an advanced directive such as a will, or testamentary letters from a probate court. If you do, you will need to provide that documentation as confirmation to the FSSA. In its response, FSSA has provided forms for you to be designated as an authorized party and the records will be made available to you. I trust this will be an adequate solution to your public records request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Indiana Family and Social Services Administration did not violate the Access to Public Records Act (APRA).

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kimberly Crawford, Esq.