



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

January 7, 2014

Mr. Michael D. Reschke  
1900 S. Walnut St.  
Bloomington, IN 47402

*Re: Formal Complaint 14-FC-299; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana State Department of Health*

Dear Mr. Reschke,

This advisory opinion is in response to your formal complaint alleging the Indiana State Department of Health ("ISDH") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Kelly MacKinnon, Esq., Director of Legal Affairs and Enforcement, responded on behalf of ISDH. 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 December 3, 2014.

## BACKGROUND

Your complaint dated December 2, 2014, alleges the Indiana State Department of Health violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On October 27, 2014, you submitted a public records request to ISDH seeking copies of immunization compliance rates for named school systems. You received a denial of your request on November 18, 2014 stating ISDH does not keep the data in the form you requested – rather they only keep it at the state level. ISDH referred you to the local school corporations for information on individual schools.

Immunization data is collected by ISDH pursuant to Ind. Code § 20-34-4-6. You renewed your request on November 3, 2014 and again on December 1, 2014. Again, you were told ISDH does not keep data on individual schools.

ISDH responded to your request arguing that schools upload data through the Children and Hoosier Immunization Registry Program ("CHIRP"). CHIRP contains educational medical records covered by the Federal Educational Rights and Privacy Act ("FERPA").

CHIRP aggregates the individual data into state-wide level reports. CHIRP does not generate reports by county or school system.

### **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 State Department of Health 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 ISDH’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).

Based upon the representations of ISDH, it appears as if they simply do not have the information you seek. A report of individual school immunization rates is not generated nor maintained by the agency. This Office has consistently held that a public agency does not have the obligation under APRA to create a record to satisfy a public records request. Other entities – such as the individual school system – may have the information you seek; however, ISDH is not the agency from which the information is to be sought.

### **CONCLUSION**

It is the Opinion of the Public Access Counselor the Indiana State Department of Health did not violate the Access to Public Records Act.

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. Kelly MacKinnon, Esq.