
OPINION OF THE PUBLIC ACCESS COUNSELOR

LOGAN K. SCHULZ,
Complainant,

v.

OFFICE OF THE DCS OMBUDSMAN,
Respondent.

Formal Complaint No.
22-FC-83

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Office of the Department of Child Services Ombudsman violated the Access to Public Records Act.¹ Department of Administration General Counsel John Snethen filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following

¹ Ind. Code § 5-14-3-1-10.

opinion to the formal complaint received by the Office of the Public Access Counselor on May 23, 2022.

BACKGROUND

This case involves a dispute about whether the Office of the Department of Child Services Ombudsman violated the Access to Public Records Act's (APRA) by denying access to certain reports.

Around May 16, 2022, Logan Schulz (Complainant) filed a public records request with the DCS Ombudsman for investigation. The investigation was prompted by a separate complaint filed by Schulz in his capacity as legal custodian of two adopted children.

On May 18, 2022, the DCS Ombudsman provided Schulz with two letters related to the underlying investigations, however, the agency denied access to the remaining records.

As a result, Schulz filed a formal complaint with this office.

The Office of the Department of Child Services Ombudsman is housed within the Indiana Department of Administration because it operates independently of DCS. As a result, IDOA filed a response on behalf of the Ombudsman.

For its part, the Ombudsman asserts that it provided the statutorily required reports to Schulz. The agency contends it has discretion to withhold the remaining records, which consist of nonbinding recommendations, under APRA's deliberative materials exception.² Therefore, IDOA argues the Ombudsman's denial is justified under APRA.

² Ind. Code § 5-14-3-4(b)(6).

ANALYSIS

1. The Access to Public Records Act (APRA)

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. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

The Office of the Department of Child Services Ombudsman is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Ombudsman’s disclosable public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. DCS Ombudsman reports

Statutorily, the Office of the Department of Child Services Ombudsman may receive and investigate complaints against DCS for an act or omission in the discharge of DCS’s duties. *See* Ind. Code § 4-13-19-5(a). Notably, Schulz filed

two complaints against DCS with the Ombudsman regarding his children.³

Notably, at the conclusion of the complaint investigation, the Ombudsman issues reports and recommendations to DCS. The Ombudsman may issue these reports to others who have standing to receive it.

Here, the dispute is twofold: (1) Schulz cites his dissatisfaction with the investigative process itself and the detail contained in the Ombudsman's report; and (2) Schulz's complaint concerns recommendations issued by the DCS Ombudsman.

Although Indiana Code section 4-13-19-5(d)(1) requires an "appropriate report" be provided to a legal guardian, the statute neither defines "appropriate report" nor the report's required contents.

This office lacks jurisdiction to address the DCS Ombudsman's investigatory procedures. The same is true for the breadth of the Ombudsman's reports. Schulz received reports (in the form of a letter) at the conclusion of the Ombudsman's investigation. The reports provided by the Ombudsman's office, irrespective of their perfunctory nature, satisfy the statute.

3. Ancillary recommendations

In addition to the required reports, the Ombudsman may issue recommendations to DCS as part of an investigation. The statute, albeit confusing, does not explicitly give a legal

³ At the time of the complaints, Schulz was a foster parent to the children, but is now a legal adoptive parent.

guardian standing to receive the recommendations provided to DCS by the Ombudsman. Instead, the statute mandates disclosure to DCS and forbids disclosure to certain others:

The department of child services ombudsman shall provide a copy of the report and recommendations to the department of child services. The office of the department of child services ombudsman may not disclose to:

- (1) a complainant;
- (2) another person who is not a parent, guardian, or custodian of the child who was the subject of the department of child services' action or omission; or
- (3) the court, court appointed special advocate, or guardian ad litem of the child in a case that was filed as a child in need of services or a termination of parental rights action;

any information that the department of child services could not, by law, reveal to the complainant, parent, guardian, custodian, person, court, court appointed special advocate, or guardian ad litem.

Ind. Code § 4-13-19-5(e). Absent a requirement to disclose to a legal guardian, any other exception to disclosure would presumably apply.

Here, the Ombudsman claims the recommendations may be withheld from disclosure under APRA's deliberative materials exception. Indeed, APRA gives public agencies the discretion to withhold—or disclose— deliberative materials, which are the following types of records:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Ind. Code § 5-14-3-4(b)(6). Recommendations between an Ombudsman and the agency it investigates would seemingly qualify as deliberative material.

In any event, Schulz's argument is well taken. Schulz wants documented proof that his grievance against DCS was properly investigated. Even so, the law does not expressly require that a complainant receive that resolution. *See* Ind. Code § 4-13-19-5.

Nevertheless, this dispute appears to be more of a legislative issue rather than a public access issue.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Office of the Department of Child Services Ombudsman did not violate the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

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