



# STATE OF INDIANA

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December 15, 2025

Re: Complaint 25-FC-037  
Tony Cook (Complainant) v.  
Indiana Department of Child Services (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed March 21, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on March 26, 2025, requesting a formal response by April 21, 2025. Respondent submitted its formal response by its General Counsel, Joel McGormley, on April 21, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide a copy of facility licensing records that were prepared and produced as a summary document.

## **ANALYSIS**

The public policy of 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 is to provide the information.” Indiana Code (IC) 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

APRA contains exceptions-both mandatory and discretionary-to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. IC 5-14-3-4(a).

Complainant states that on February 10, 2025, it requested a copy of two (2) additional batches of facility licensing records. Complainant states that on previous occasions in 2024 that Complainant requested and received four (4) batches of records, with two (2) of those batches including a designation of “APRA request summary” for certain facility licensing information.

Complainant requested the records designated “APRA request summary” for the other two (2) batches that did not include that information. On the same day as the request, the Respondent denied the Complainants request stating that the requested records were deliberative in nature and citing the statutory provision to deny disclosure, admitting that the two (2) previous batches containing “APRA request summary” had been released in error.

APRA also provides that certain public records can be excepted from disclosure at the discretion of the public agency. Ind. Code 5-14-3-4(b)(2) provides that a public agency can except from disclosure:

The work product of an attorney representing, pursuant to state employment or appointment by a public agency:

- (A) a public agency;
- (B) the state; or
- (C) an individual.

Respondent in its formal response raised this exception to withhold the summaries from disclosure. Respondent stated that the summaries were prepared by agency attorneys for the purpose of accumulating factual information and providing an assessment as to the severity of the issues that were reviewed. Respondent further states that the summary qualified as work product, the definition of which is information 1) compiled by an attorney; 2) in reasonable anticipation of litigation, 3) including notes and statements taken during interviews of prospective witnesses, and 4) including legal research or records, correspondence, reports or memoranda to the extent it contains attorney’s opinions, theories or conclusions. IC 5-14-3-2(u).

It is clear that the summary is a compilation of factual information, and not all of the information or documents that were reviewed. The document submitted with the formal response was marked as “Attorney Work Product”. The summary’s columns of information referred to many supporting documents such as licensing and other audits, background checks and hotline information. The summary identified issues for the benefit of someone’s review and presumed action.

APRA also provides that a public agency may withhold, at its discretion, “Records that are intra-agency or interagency or deliberative material, including material developed by a private contractor under a contract with a

public agency that are expressions of opinion or are a speculative nature, and that are communicated for the purpose of decision making.” IC 5-14-3-4(b)(6). The statute does not require that such “expressions of opinion” be written word but merely conveyed. Here the summaries were color coded in a manner to convey the severity of the issue and risk. The color coding existed as an opinion of the preparer and purportedly was created to convey those opinions to other agency personnel for purposes of formulating agency responses or in anticipation of litigation. This office agrees that the materials were deliberative in nature.

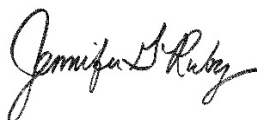
Even Complainant’s complaint exhibits, containing the erroneously given summaries, were color coded and included a column with unanswered questions, indicating that the document was evolving and deliberative in nature for decision-making.

The Indiana Court of Appeals observed that the purpose of protecting such communications is to “prevent injury to the quality of agency decisions” by encouraging frank discussion of legal or policy matters in writing,” *Newman v. Bernstein*, 766 N.E. 2d 8, 12 (Ind. Ct. App. 2002).

When a record contains both disclosable and non-disclosable information and an agency receives a request for access, the agency shall “separate the material that may be disclosed and make it available for inspection or copying.” IC 5-14-3-6(a). Respondent has withheld the summary based on the attorney work product exception and not merely the deliberative nature of the document. Respondent argues that the redaction of the document would lead to an otherwise meaningless record.

## **CONCLUSION**

This office finds that the Respondent did not violate APRA by failing to provide copies of the public records it deemed attorney work product and deliberative in nature.



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