



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)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 29, 2015

Mr. Theodore Miller
831 Douglas Drive
Evansville, Indiana 47712

Re: Formal Complaint 15-FC-315; Alleged Violation of the Access to Public Records Act by the State of Indiana, Family and Social Services Administration

Dear Mr. Miller:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Family and Social Services Administration ("FSSA") and Ms. Lisa Graham violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* FSSA has responded via Ms. Michelle Baty, Esq. 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 November 24, 2015.

BACKGROUND

Your complaint dated November 18, 2015 alleges FSSA violated the Access to Public Records Act by failing to respond to your request within a reasonable time frame.

You have been seeking a copy of an ALJ decision concerning your benefits. You are unaware of the exact date of the decision, but know it occurred sometime between July and September of 2013. On November 1, 2015 you made a request to Ms. Graham, who informed you FSSA's legal department would respond within 48 hours. You contend no response was given after the expiration of the 48 hours.

On December 2, 2015 FSSA responded. FSSA contends they sent the records to you on November 19, 2015.

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 State of 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 FSSA's disclosable 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). 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(c). 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. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(d).

The basis for your complaint appears to be Ms. Graham's statement the legal department would contact you within 48 hours. However, Ms. Graham's statement does not appear to be intended as a promise or contract, but rather an estimate as to when she believed further communication would occur.

ALJ decisions should be readily available to members of the public pursuant to Ind. Code §§ 4-21.5-3-32 & 33(b)(7). Generally, 18 days is a reasonable timeframe for a public records production, however, administrative orders and rulings should be readily available sooner. While I do not believe there has been a violation of the APRA, FSSA should be mindful that public records such as administrative orders should be efficiently stored for quick production.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Family and Social Services Administration has not violated 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. Michelle Baty, Esq.