



STATE OF INDIANA

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June 10, 2013

Mr. Craig Franke
11715 Fox Road #400-202
Indianapolis, IN 46236

Re: Informal Inquiry 13-INF-28; Division of Unclaimed Property

Dear Mr. Franke:

This is in response to your informal inquiry regarding the Attorney General's Division of Unclaimed Property ("Division"). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. Matt Light, Chief Counsel, responded on behalf of the Division. His response is enclosed for your reference

BACKGROUND

In your informal inquiry, you question whether the Division is obligated under Indiana law to either confirm or deny an individual's social security number ("SSN") or date of birth ("DOB") from records maintained by the Division in response to a request. If the Division is so obligated, you inquire what is a reasonable period of time for the Division to make such a disclosure, in light of your belief that the information can be electronically verified in less than a minute. You further seek clarification whether the Division's responsibility to provide such a service is dependent on how the request was submitted, being either by telephone, email, or through the U.S. Postal Service.

You advise that currently the Division requires that a party file a claim for unclaimed property before the agency essentially confirms or denies an individual's SSN or DOB. You allege that this practice requires perhaps dozens of individuals to file a claim for the same property before the Division acknowledges whether the SSN and DOB match the claim form. You argue that this practice places an undue burden on the requestor and requires the Division to spend thousands of work hours reviewing claim letters and denying unnecessary claims. You note that millions of SSNs and DOBs are available via indianadigitalarchives.com. You believe that just because the person seeking to file a claim is living should not preclude the confirmation of a public information request to determine whether a SSN and/or DOB are accurate.

In response to your informal inquiry, Mr. Light provided that pursuant to I.C. § 34-32-1, the Division collects unclaimed intangible property reported by holders who

cannot locate the property's owner. The Division publishes lists of owners of unclaimed property in newspapers throughout Indiana, and also maintains a website (www.indianaunclaimed.gov), that includes a searchable database of unclaimed property. An owner whose property is held by the Division (or the owner's heirs or legal representative) can file a claim for the return of property.

The Access to Public Records Act ("APRA"), I.C. 5-14-3 *et. seq.*, does not require that an agency provide information via telephone. Further, the APRA allows a person to "inspect and copy the public records of a public agency." I.C. § 5-14-3-3. You have requested copies of records of unclaimed property held by the Division. In response, the Division has provided you with an electronic copy that includes the same information that is available on the Division's website. The information includes the following for each property if the holder has reported it: amount/value of property, description of the property, holder's name, holder's address, National Association of Unclaimed Property Administrator's property code, owner's name, owner's address, property identification number, report identification number, and year reported.

In some cases, in addition to the information available through the website, the Division's records may include the owner's SSN and/or DOB. The Division does not provide the owner's SSN as I.C. § 4-1-10-3 prohibits a state agency from disclosing a SSN except in limited circumstances that do not apply here. When a person files a claim for unclaimed property, the claim form requests the last four digits of the person's SSN. The Division uses this information to validate the claim. However, the Division does not confirm a property owner's SSN to a prospective claimant or anyone else. Doing so would violate the requirements of I.C. § 4-1-10-3.

The Division understands your interest in verifying SSN's to determine whether you have located the correct owner of the property. However, in most cases, the public information (including the owner's address and holder information) is sufficient for a person to determine if the property belongs to that person. A person who has an interest in a property can file a claim, and provide the last four digits of the SSN.

You have previously requested the unclaimed property database that is published on the Division's website, which does not include the owner's DOB. It is the Division's understanding that you would like to obtain or verify the DOB associated with individual properties by telephone. You can make a written request to inspect and obtain copies of records associated with individual properties, but the Division is not required to verify or provide information over the telephone. Upon receipt of a written request, the Division will gather all associated records and provide those to you in a reasonable period of time.

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* I.C. § 5-14-3-1. The Attorney General is a public agency for the purposes of the

APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Attorney General's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

Pursuant to I.C. § 5-14-3-3(a)(2), an agency has discretion to require that requests for inspection and copying of records be made in writing. Thus, the Division would not violate the APRA by requiring that you submit a written request for records. I.C. § 5-14-3-4(a)(1) provides that an agency may not disclose, except pursuant to statute or court order requiring disclosure, any record declared confidential by state statute. I.C. § 5-14-3-4(a)(12) provides that a SSN contained in the records of a public agency is confidential. Exceptions to the prohibition of disclosure of a SSN by a state agency are found under I.C. § 4-1-10-5. You have not identified, nor am I able to ascertain, any exception to the prohibition of disclosure of an individual's SSN that would be applicable to your request of the Division. It is my opinion that the Division would be prohibited from providing and/or verifying an individual's SSN in response to your request.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

The Division has indicated that upon receipt of your written request for records, it will provide all records associated with an individual property, or list of properties, which you would then be able to verify an individual's DOB. The Division has indicated that the records would be provided in a reasonable period of time, which generally would be within two weeks of the receipt of the request. It is my opinion that the Division's anticipated response time to your requests would be reasonable under section 3(b) of the APRA in light of the requirement that the Division must regulate any material interference with the regular discharge of its functions and duties.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Matt Light