



STATE OF INDIANA

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August 23, 2013

Mr. Jeff Collins
General Counsel
Indiana Professional Licensing Agency
402 W. Washington Street
Indianapolis, Indiana 46204

Re: Informal Inquiry 13-INF-43; Disclosure of records pursuant to I.C. § 25-1-5-11(h)

Dear Mr. Collins:

This informal opinion is in response to your inquiry regarding the disclosure of records pursuant to I.C. § 25-1-5-11(h) and the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry.

BACKGROUND

The Indiana Professional Licensing Agency ("IPLA") performs all administrative functions, duties, and responsibilities assigned by law or rule to thirty-five (35) regulatory boards, commissions, and committees (collectively, "Boards") that license, certify, or register various professional and health-related occupations through the state of Indiana. *See* I.C. § 25-1-5-3; I.C. § 25-1-6-3. Included in these administrative duties, the IPLA maintains records for over 475,000 active licensees and 270 governor-appointed board members.

In April 2013, Governor Pence signed House Bill 1376 into law. HB 1376 immediately modified I.C. § 25-1-5-11 to make "personal information" confidential for purposes of I.C. § 5-14-3-4; prohibiting IPLA and its staff from disclosing the electronic mail address and home telephone number of an individual who applies for, holds, or has held a license, certificate, registration, or permit issued by an IPLA Board or is a member of a Board administered by the IPLA, unless the request meets specifically delineated criteria.

As applicable to your inquiry, I.C. § 25-1-5-11(h)(1) provides that the IPLA may disclose a phone number and electronic mail address of a protected individual if the person proves his identity and represents that he/she is using the information for use by a

government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions.

On July 13, 2013, the IPLA received a written request from State Senator Ronald T. Grooms, as a representative of the Health Finance Commission (“HFC”) and the Commission on Developmental Disabilities (“CDD”). Senator Grooms requested the “contact information (electronic mail) for all licensed pharmacists, registered nurses, nurse practitioners, physical therapists, and dentists in Clark and Floyd Counties.” The purpose of Mr. Grooms request was to maintain contact with the health care industry as it pertains to the charges and duties of members of the HFC and CDD.

You noted that the term “government agency” is not defined under I.C. § 25-1-5-11 or to the knowledge of IPLA, anywhere under Title 25 of the Indiana Code. However, it is IPLA’s understanding that when “agency” is used within the Indiana Code, it sometimes includes entities exercising only the executive powers of state government (e.g. I.C. § 4-22-2-3(a)). Further, although both a “court” and “law enforcement agency” are expressly referenced as types of “government agencies” under I.C. § 25-1-5-11(h)(1), the new statute is silent regarding whether legislative branches of government, such as the HFC and CDD, or members of legislative branches of government are considered “government agencies” who are eligible to receive confidential information from the IPLA pursuant to I.C. § 25-1-5-11.

Pursuant to I.C. § 5-14-3-10, public officials and employees are subject to criminal prosecution for knowingly or intentionally disclosing confidential information. Accordingly, the IPLA is seeking an advisory opinion whether the IPLA’s disclosure of confidential “personal information” as defined by I.C. § 25-1-5-11(c), to a member of the legislature is permissible in circumstances where a legislator provides the IPLA with proof of identity and represents that use of the information will be limited to use by a government agency or a person acting on behalf of a government agency in carrying out its functions.

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 IPLA 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 IPLA’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).

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* I.C. § 5-

14-3-9(c). As applicable to your inquiry, I.C. § 25-1-5-11(d) provides that the personal information of an individual who is a licensee; applicant; or board member is confidential for purposes of I.C. § 5-14-3-4 and may not be disclosed to the public by the agency or a board. “Personal information” is defined as a home telephone number and electronic mail address. *See* I.C. § 25-1-5-11(c). The law provides an exception to confidentiality, in that the IPLA may disclose the email address and home telephone number of a licensee, applicant, or board member, when the person seeking the information provides proof of identity and represents that the use of the personal information will be strictly limited for use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions. *See* I.C. § 25-1-5-11(h)(1).

On behalf of the HFC and CDD, Senator Grooms has submitted a request in writing for the electronic mail address for all licensed pharmacists, registered nurses, nurse practitioners, physical therapists, and dentists in Clark and Floyd County. Senator Grooms has provided that the purpose of the request is to maintain contact with the health care industry as it pertains to the charges and duties of members of the HFC and/or CDD. You are seeking guidance regarding the term “government agency” as used in I.C. § 25-1-5-11 and whether the legislative branch of government or its members would qualify.

The term “government agency” is not defined under Title 25 of the Indiana Code. You note that in other titles, the term “agency” only includes those entities exercising the executive powers of state government and does not include the judicial or legislative departments. *See* I.C. § 4-22-2-3(a). The APRA does not define “government agency”; however, it defines a “public agency” as any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state. *See* I.C. § 5-14-3-2(n)(1).

The HFC is established pursuant to state law to study health finance in Indiana. *See* I.C. § 2-5-23-3. The HFC may study any topic directed by its chair, assigned by the legislative council, or concerning any issue that includes the delivery, payment, and organization of health care services, rules adopted under I.C. § 4-22-2 that pertain to health care delivery, payment, and services that are under the authority of any board or agency of state government, the implementation of I.C. § 12-10-11.5, and the state Medicaid program and the children’s health insurance program established under I.C. 12-17.6. *See* I.C. § 2-5-23-4. The HFC is required to submit to the legislative council findings and recommendations on any topic assigned to the HFC by the legislative council. *See* I.C. § 2-5-23-14.

The CDD is established pursuant to state law as a legislative study committee. *See* I.C. § 2-5-27.2-2. The CDD is comprised of members of the House of Representatives, members of the State Senate, and governor appointments. The CDD is charged with developing a long range plan to stimulate further development of costs effective, innovative models of community based services and to review and make recommendations regarding any unmet needs for development disability services. *See*

I.C. § 2-5-27.2-4. The CDD operates under the policies governing study committee adopted by the legislative council. *See* I.C. § 2-5-27.2-5.

It is my opinion that both the HFC and CDD would qualify as a “governmental agency” under I.C. § 25-1-5-11 and thus the IPLA would not be prohibited from disclosing the personal information requested to Senator Grooms, as a member of the HFC and CDD, as long as he submits the proper proof of identity. While I do note that in other areas of the Indiana Code, the term “agency” is limited to those agencies exercising the executive power of the state, Title 25 contains no such limitation. The statute simply provides for the disclosure to “governmental agencies” under certain proscribed circumstances. Both the HFC and CDD were created by state statute to assist and provide guidance to the General Assembly. I believe that both commissions would qualify as a “public agency” under I.C. § 5-14-3-2(n)(1), as they are created by statute and exercising the legislative power of the state. Accordingly, both agencies would be subject to APRA and all of its requirements. Pursuant to I.C. § 5-14-4-10(7), I would recommend that the General Assembly define the term “governmental agency” under I.C. § 25-1-5-2 so as to bring further clarity and finality to the issue. Also I would note that Senator Grooms would be *strictly limited* in using the personal information for carrying out the functions of the HFC and CDD (emphasis added). Further, Senator Grooms, the HFC, and/or CDD would be prohibited from disclosing the personal information to any other party. *See* I.C. § 5-14-3-6.5.

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', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Senator Ronald T. Grooms, Mitchell Osterday