

April 29, 2004

Mr. Robert G. Beatty, No. 884923
Pendleton Correctional Facility
P.O. Box 30
Pendleton, Indiana 46064

*Re: Formal Complaint 04-FC-56; Alleged Denial of Access to Public Records
by the Indiana Auditor of State*

Dear Mr. Beatty:

This is in response to your formal complaint alleging that the Indiana Auditor of State (Auditor) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when that office failed to produce records responsive to your record request within a reasonable time of receipt of that request. Copies of the Auditor's response to your complaint and to your record request are enclosed for your reference. For the reasons set forth below, I find that the Auditor did not violate the APRA.

BACKGROUND

On February 23, 2004, the Auditor received your written request for public records. The request sought various public records including public records reflecting the compensation of a Special Judge. On that same day the Auditor responded with a letter denying that the office maintained certain of the records requested. With regard to the request for compensation records, the Auditor indicated that the office would determine whether that office maintained any records responsive to your request, and requested that you notify the office and advise how you would pay for any responsive record. You replied on February 27, 2004, indicating that you had arranged for payment through a third party. You allege that you wrote again on March 15, 2004, seeking information on payment and status of the request. On March 30, 2004, this office received your complaint in the instant matter alleging that the Auditor violated the APRA by failing to produce responsive records in a timely manner. The Auditor responds that the office made a search of the records of that office and that search was ongoing from the time it received your request through and including April 20, 2004. The Auditor presents internal correspondence from that office supporting that claim. On April 20, 2004, the Auditor notified you that it did not maintain any records responsive to your request.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the

request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production when records are not in a central repository, are archived off-site, include information that may require counsel or other review for confidentiality, or include disclosable and nondisclosable information that the public agency must separate for purposes of producing what is disclosable. Other factors related to the business functions of the office and duties of the staff responsible for production may effect resolution of the question. At bottom, interpreting Indiana Code 5-14-3-3 and 5-14-3-9 to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. IC 5-14-3-1; IC 5-14-3-7(a).

Here, the Auditor received your request and responded on the same day. The Auditor's initial response was certainly timely. Further, the Auditor's subsequent response regarding production was not unreasonably delayed or otherwise in violation of the APRA. The Auditor made a timely inquiry and search of the files of that office seeking information in any record regarding payments to the special judge at issue. While the Auditor's initial response letter did not state a date certain for production or further contact – and, with that office maintaining the burden of production, it should have done so – there is no evidence that the office delayed its search or otherwise impeded your access to the requested records. Indeed, if anything the search was impeded by your misspelling of the judge's name in your request. The Auditor's Office searched for records under both the misspelled name and another version of the name. The Auditor's Office determined that it did not have any records responsive to your request. This response was not unreasonably delayed under the circumstances presented here.

CONCLUSION

For the reasons set forth above, I find that the Auditor did not violate the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Paul F. Lottes