

January 14, 2008

Craig Franke
PO Box 421195
Indianapolis, Indiana 46242

Re: Formal Complaint 08-FC-7; Alleged Violation of the Access to Public Records Act by the Marion County Auditor's Office

Dear Mr. Franke:

This is in response to your formal complaint alleging the Marion County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Auditor's response to your complaint is enclosed for your reference. It is my opinion that the Auditor did not violate the APRA.

BACKGROUND

In your complaint you allege that you verbally submitted a request for copies of records to Michelle Birdwell of the Auditor's office on December 13, 2007. Specifically, you requested copies of claims of tax sale surplus filed with the Auditor by a particular company. You allege Ms. Birdwell indicated she was too busy to assist you at the time. You further allege Ms. Birdwell indicated that if you returned the following day she would be able to provide the copies. You allege you further requested a copy of the "payment voucher report" for the following day.

You allege you returned to the office the following day and requested the same records. You allege Ms. Birdwell indicated she needed to speak with Drew Carlson of the City of Indianapolis Office of Corporation Counsel before providing the records. Ms. Birdwell then indicated the request must be made in writing and would take approximately three weeks to process. Finally, you allege that Mr. Carlson violated the APRA because he was not available to meet with you when you appeared at the office and insisted upon seeing him.

You filed this complaint on December 17. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Auditor responded to your complaint by letter dated January 4 from Mr. Carlson. Mr. Carlson contends your request was not denied. Instead, the Auditor granted you access to the records, pending review by the City-County Public Access Counselor to determine whether the records contained any nondisclosable information. Mr. Carlson contends Ms. Birdwell told you repeatedly that the records would be available within five to seven business days. The records were sent to you on December 18. Finally, Mr. Carlson contends the APRA does not require a public official to meet with a member of the public.

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." I.C. §5-14-3-1. The Auditor is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Auditor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). An agency may require a request to be made in writing. I.C. §5-14-3-3(a). If the request is delivered verbally or in person and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. §5-14-3-7(c).

The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. Past public access counselors have addressed this issue on several occasions. I have recently addressed the issue in *Opinion of the Public Access Counselor 07-FC-249*, finding five weeks was not an unreasonable period of time for the Marion County Election Board to produce records pursuant to a request.

Here, the Auditor received your verbal request and responded to you verbally at the time of the request, which is within the 24 hours allowed by the APRA. I.C. §5-14-3-9(a). It has long been the opinion of the public access counselor that records must be produced in a reasonable period of time, considering the facts and circumstances. Here the Auditor needed to gather any responsive records and then ask the City-County Public Access Counselor to review those records to determine whether any mandatory or discretionary exceptions to disclosure under I.C.

I.C. §5-14-3-4 applied to those records. This is in addition to the regular duties of the Auditor. I do not find the five day time period between the Auditor's receipt of your request and production of the records to be an unreasonable period of time for review and production.

Regarding your allegation related to your demand for Mr. Carlson to meet with you when you appeared in his office, this issue has been addressed by my predecessor, Karen Davis, in *Opinion of the Public Access Counselor 07-FC-24*. There, Counselor Davis indicated “[n]othing in the APRA or the Open Door Law . . . requires a public agency to grant a member of the public a meeting.” *Id.* I agree with Counselor Davis's opinion and affirm that nothing in the APRA requires Mr. Carlson to meet with you.

Finally, your allegations that Ms. Birdwell and Mr. Carlson are conspiring to improperly process tax sale surplus claims to your detriment or have any personal relationships with employees at a private company are outside the purview of this office.

CONCLUSION

For the foregoing reasons, it is my opinion the Auditor has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Drew Carlson, City of Indianapolis Office of Corporation Counsel
Michelle Birdwell, Marion County Auditor's Office