



STATE OF INDIANA

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December 21, 2009

Craig Franke
PO Box 421195
Indianapolis, Indiana 46242

*Re: Formal Complaint 09-FC-276; Alleged Violation of the Access to
Public Records Act by the Lake County Auditor's Office*

Dear Mr. Franke:

This is in response to your formal complaint alleging the Lake County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, 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 the Auditor violated the APRA by failing to produce certain records to you within a reasonable amount of time. On November 6, 2009, you requested access to a copy of the "Surplus Tracking Sheet Report." A staffer for the Auditor agreed to print the requested information but informed you that the printing would take several minutes. You further allege that the Auditor requested "photo graphic id [sic], or some other form of racial profiling data," before she produced the copies to you. You refused to provide the identification. The staffer thereafter refused to produce the information to you because she said she had a reasonable amount of time to do so and that she would produce it in one week.

On behalf of the Auditor, Attorney James L. Wieser responded to your complaint. Mr. Wieser acknowledges that you appeared at the Auditor's office on November 6th and sought a report regarding property sales tax surpluses. Mr. Wieser states that you requested reports from several years, including 2006 and 2007. The 2006 report was available and produced to you immediately. Because the 2007 report, however, was not yet completed, you were asked to return to the Auditor's office in one week, at which time the report would be ready for you.

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 records are excepted from disclosure as confidential or 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 or on a form provided by the agency. 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. Here, it appears that the Auditor orally responded to your request in a timely manner. I.C. § 5-14-3-9(a).

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the relevant facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. 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. 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).

According to Mr. Wieser, the Auditor immediately produced to you all records that the Auditor maintained at the time of your request. The remaining records, which were unavailable to you because they were not yet complete, were made available to you within one week. If the record was not yet created, the Auditor could not have produced it to you. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Under those circumstances, it is my opinion that the Auditor did not violate the APRA by producing some records and producing the remaining records within one week.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a prominent, sweeping flourish at the end of the name.

Andrew J. Kossack
Public Access Counselor

cc: James L. Wieser, Wieser & Wyllie, LLP