



# STATE OF INDIANA

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February 1, 2010

Mr. Larry E. Kuhn  
DOC # 894858  
4490 W. Reformatory Rd.  
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-13; Alleged Violation of the Access to Public Records Act by the Indiana Professional Licensing Agency*

Dear Mr. Kuhn:

This advisory opinion is in response to your formal complaint alleging the Indiana Professional Licensing Agency ("PLA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

According to your complaint, on November 20<sup>th</sup> and December 14<sup>th</sup> of 2009, you wrote to the PLA and requested "verification that Pecharich, R.D. # 251228 was a licensed and registered dietician in good standing in the State of Indiana." You allege that PLA failed to respond to either communication.

My office forwarded a copy of your complaint to the PLA. To date, we have not received a response.

## 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." Ind. Code § 5-14-3-1. The PLA 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 PLA's public records 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). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. I.C. § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must 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. I.C. § 5-14-3-9(c). Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1.

Here, it is unclear what records, if any, you seek because your written request to the PLA is in the form of an interrogatory (question) seeking information. While the APRA obligates agencies to respond to requests for *records*, it does not obligate agencies to respond to general requests for *information*. See I.C. § 5-14-3-3(a)(1) (requiring that a request for inspection or copying must “identify with reasonable particularity the *record* being requested” (emphasis added)). If you resubmit your request and identify the record(s) you seek with reasonable particularity, I trust the PLA will respond to your request as required by section 9 of the APRA.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the PLA has not violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Marty Allain, Indiana Professional Licensing Agency