



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 14, 2010

Mr. S. E. Van Dyke
3516 N. Rural St.
Indianapolis, IN 46218

*Re: Formal Complaint 10-FC-211; Alleged Violation of the Access to
Public Records Act by the Marion County Auditor*

Dear Mr. Van Dyke:

This advisory opinion is in response to your formal complaint alleging the Marion County Auditor ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Auditor's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on August 26, 2010, you submitted a request to the Auditor for tax sale records associated with a certain parcel in Marion County. As of September 7th, you had not received a response.

In response to your complaint, the Auditor claims that she sent you responsive records via facsimile on September 1st. The Auditor enclosed a copy of the relevant facsimile activity report showing that she sent the records to the facsimile number from which she received your request, the last four numbers of which are 8078.

ANALYSIS

The public policy of the APRA states, "[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 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 Auditor's public records during regular business hours unless the 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 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). 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. Here, the Auditor responded to your August 26th request within the required seven (7) days when, on September 1st, the Auditor sent the requested record via facsimile to the number from which you sent your request. It is unclear why the facsimile did not reach you, but it is obvious to me that the Auditor made a good faith effort to provide you with the records. Under such circumstances, I am reluctant to say that the Auditor violated the APRA. Moreover, the documents that the Auditor sent to you on September 1st are enclosed with this opinion. I trust that your receipt of the relevant records resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Auditor did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Hon. Billie J. Breaux