



# STATE OF INDIANA

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December 9, 2010

Mr. Warren Alan Auxier  
P.O. Box 215  
Hanover, IN 47243

*Re: Formal Complaint 10-FC-307; Alleged Violation of the Access to Public Records Act by Jennings County E.M.S.*

Dear Mr. Auxier:

This advisory opinion is in response to your formal complaint alleging Jennings County E.M.S. ("E.M.S.") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.* I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that you delivered a request to E.M.S. on November 22, 2010. After you did not receive a response from E.M.S., you delivered another letter to E.M.S. on November 30th inquiring about the status of your request and requesting additional records. At that time, E.M.S. informed you that your request had been sent to the Jennings County Attorney and that you would need to submit any additional requests to him. After you contacted the attorney's office, he sent you a response via facsimile stating that E.M.S. would provide you with all of the records you requested except employee training records and personnel files you requested. The attorney denied the remaining records by citing to "I.C. 5-14-3-4." You contacted the attorney by phone and via letter asking him to cite to the specific exemption or exemptions authorizing the withholding of the records, but the attorney informed you via telephone that he had no further response.

My office forwarded a copy of your complaint to the E.M.S. As of today, 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.” I.C. § 5-14-3-1. E.M.S. is a public agency for purposes of the APRA. I.C. § 5-14-3-2; *see also Op. of the Public Access Counselor 09-FC-57; Alleged Violation of the Access to Public Records Act by the Middletown Fallcreek Township E.M.S.* Accordingly, any person has the right to inspect and copy its 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). If the request is delivered in person and the agency does not respond within 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. Because these timeframes have elapsed after you delivered your request on November 22nd, your request was deemed denied as a matter of law and E.M.S. should have sent you a response that complied with subsection 9(c) of the APRA. That provision requires that when a request is made in writing and the agency denies it, 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). In my opinion, citing generally to section 4 of the APRA is not sufficient to comply with subsection 9(c)’s requirement that an agency cite to the *specific* exemption or exemptions authorizing the denial of access.

Because E.M.S. neither cited to a specific provision of the APRA authorizing its denial nor provided a response to your complaint, it is unclear to me why E.M.S. denied your request. 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. Because E.M.S. has not provided a justification for withholding the records at issue here, it is my opinion that it has failed to carry that burden.

If E.M.S. cannot justify withholding the records under the APRA, I encourage the agency to release the records to you as soon as possible. To the extent E.M.S. persists in denying access following the issuance of an advisory opinion from this office and you believe they are in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

## CONCLUSION

For the foregoing reasons, it is my opinion that E.M.S. violated the APRA by failing to deny your request in accordance with section 9 of the APRA. Moreover, E.M.S. has not sustained its burden to show that the withheld records are exempt from disclosure under the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Shawn K. Louden