



# STATE OF INDIANA

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May 13, 2010

Mr. William T. Rosenbaum  
8555 River Road  
Suite 310  
Indianapolis, IN 46240

*Re: Formal Complaint 10-FC-92; Alleged Violation of the Access to Public Records Act by the Indiana State Treasurer*

Dear Mr. Rosenbaum:

This advisory opinion is in response to your formal complaint alleging the Indiana State Treasurer (the "Treasurer") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Treasurer's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on March 12, 2010, you renewed<sup>1</sup> a request for access to copies of attorney invoices and statements related to "the recent Chrysler bankruptcy litigation." Moreover, you sought access to "a copy of any contracts, agreements, or documentation in any form regarding the hiring of White & Case, or any outside contractors or vendors of any time, related to [the Treasurer's] involvement with the Chrysler bankruptcy." You state that the Treasurer's office sent you a letter dated March 16, 2010, which notified you that the Treasurer was in the process of compiling the records you requested. You believe the Treasurer violated the APRA by failing to produce the records to you within seven (7) days because approximately 23 days passed from the date of the Treasurer's March 16th response to you and the date you filed your complaint with this office: April 8th. You interpret Ind. Code § 5-14-3-9 to require the Treasurer to produce requested records within seven (7) days.

My office forwarded a copy of your complaint to the Treasurer. In response, Chief Deputy & General Counsel Jim Holden denies that the Treasurer violated the

<sup>1</sup> Although you previously sent requests for records to the Treasurer on June 10, 2009, and November 2, 2009, any alleged violations of the APRA as to those requests fall outside of the 30-day time limit for filing a complaint with the Office of the Public Access Counselor. *See* I.C. § 5-14-5-7. Consequently, I decline to address those matters here.

APRA. Mr. Holden argues that the APRA merely requires public agencies to “respond” to public records requests within seven (7) days and does not require that they provide the information within that period. He cites to advisory opinions from this office for his position that the APRA only requires public agencies to produce public records within a reasonable period of time. Moreover, Mr. Holden argues that the Treasurer produced the requested records within a reasonable period of time. He states that it took some time to identify the documents responsive to your March 12th request, which totaled 102 pages. Once identified, the records required some manual redaction of nondisclosable information. He claims that the Treasurer had only one attorney on staff who was available to complete that type of review.

## ANALYSIS

Under the APRA, a request for access to public 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. *See Opinion of the Public Access Counselor 09-FC-63*. Here, the Treasurer responded to your written request within seven (7) days of receiving it. In its response, the Treasurer acknowledged receipt of your request and informed you that it would prepare the requested records for production and contact you regarding an estimation of statutory copy fees. In my opinion, the Treasurer’s response complied with section 9 of the APRA.

With regard to the time the Treasurer took to produce your records, 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 facts and circumstances. *See, e.g., Opinion of the Public Access Counselor 00-FC-32*. 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. Moreover, 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, the APRA also provides that section 7 does not operate to deny to any person the rights secured by Section 3 of the APRA. I.C. §5-14-3-7(c).

The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Here, Mr. Holden states that it took some time to compile and review the content of the records you requested to determine whether they contained confidential information. Once the Treasurer identified and compiled the 102 pages of responsive documents contained, it was necessary to redact some nondisclosable information (i.e., attorney

work product) prior to their release. The Treasurer had only one attorney available to review and redact the records. Under such circumstances, it is my opinion that the Treasurer has sustained its burden.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Treasurer did not violate 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 large, sweeping initial "A".

Andrew J. Kossack  
Public Access Counselor

Cc: Jim Holden