



# STATE OF INDIANA

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March 10, 2011

Mr. Timothy C. Kreisle  
15 River Rd.  
Tell City, IN 47586

*Re: Formal Complaint 11-FC-48; Alleged Violation of the Access to Public Records Act by the Perry County Port Authority*

Dear Mr. Kreisle:

This advisory opinion is in response to your formal complaint alleging the Perry County Port Authority ("Authority") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Authority. The response by the Authority's attorney, Christopher M. Goffinet, is enclosed for your reference.

## BACKGROUND

According to your complaint, the Authority denied your request for access to tax returns. The Authority claimed that it did not file a Form 990 tax return. Mr. Goffinet states that the Authority is audited by the State Board of Accounts; its audits of the Authority are available online and are public records. The Authority does not maintain any tax returns responsive to your request because it does not file such returns.

## 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 Authority 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 Authority'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).

Here, the Authority maintains that it has no tax return documents that are responsive to your request because it does not file such returns. If a public agency has no

records responsive to a public records request, the agency does not violate the APRA by denying the request. “[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.” *Op. of the Public Access Counselor 01-FC-61; see also Op. 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....”). I would encourage you to visit the State Board of Accounts’ website at <http://www.in.gov/sboa/> to obtain its audits of the Authority or contact the Board at (317) 232-2513 to inquire about other means to obtain those records.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Authority 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, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Christopher M. Goffinet