



# STATE OF INDIANA

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June 6, 2012

Larry S. Corrie  
943 W. Lakeview Drive  
Nineveh, Indiana 46164

*Re: Formal Complaint 12-FC-135; Alleged Violation of the Access to Public Records Act by the White Lake Conservancy*

Dear Mr. Corrie:

This advisory opinion is in response to your formal complaint alleging the White Lake Conservancy ("Conservancy") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Robert A. Young, Attorney, responded on behalf of the Conservancy. His response is enclosed for your reference.

## BACKGROUND

On April 30, 2012, you submitted a written request for records to the Conservancy for "all public records that are accessible from 1987 to the present day" including all expenditures for services, inspections, vendors, Board members and other employee's pay, any revenue that was generated, and all reports from governing authorities. You further requested a copy of the charges that Mr. Young had invoiced the Conservancy since his date of hire and the corresponding rate.

In response to your request, Mr. Young provided copies of his contract with the Conservancy and all invoices that he had submitted. As to the remainder of the request, Mr. Young advised that you need to identify exactly what documents you are seeking. The request that was submitted did not contain sufficient detail in order for the District to identify exactly which records you were seeking. As such, the remainder of your request was denied. In your formal complaint you provide that the Conservancy should not have many records and a small budget; thus all public records of the Conservancy should be provided.

In response to your formal complaint, Mr. Young advised that he was still not certain as to what records maintained by the Conservancy would be responsive to your request. Further, it is not clear whether you are seeking copies of the records or simply an opportunity to inspect. Mr. Young advised that the records of the Conservancy are not kept in one location. Regardless, the Conservancy is more than willing to fulfill your

request, upon receiving further specific information from you detailing the records that you seek.

## 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.” *See* I.C. § 5-14-3-1. The Conservancy is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Conservancy’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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 Conservancy received and responded to your April 30, 2012 written request on May 1, 2012. Thus, it is my opinion that the Conservancy complied with the requirements of section 9 of the APRA in responding to your request.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that



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complies with the requesting party's request. *Opinion of the Public Access Counselor 04-FC-38.*

If a public agency does not maintain any records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinions of the Public Access Counselor 01-FC-61 and 08-FC-113.* A public agency is not required to conduct research or create a new record in order to satisfy a public records request. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 10-FC-56.* However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally IC 5-14-3-1; See Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88.*

As applicable here, it is my opinion that the Conservancy acted contrary to the requirements of the APRA by denying your request for lack of specificity. However, minus this technical malfeasance, it is my opinion that your request for "all public records from 1987 to the present day" is not reasonably particular. The requirements of reasonable particularity pursuant to section 3 of the APRA apply to requests made to any public agency, regardless of the agency's size and/or budget. At this point, I would encourage you to resubmit your request to the agency and provide more specific information as to what records that you are requesting and indicate whether you desire copies of said records or only the opportunity to inspect. Upon receipt of your more specific request, the Conservancy would be required to provide all records that were responsive, minus any applicable exceptions. I would note that the portion of your request received by the Conservancy that was made with reasonable particularity was provided to you within twenty-four (24) hours of its receipt; which is in my opinion a clear indication that the Conservancy intends to comply with all requirements of the APRA upon receipt of your most specified request.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Conservancy acted contrary to the APRA by denying your request for not being made with reasonable particularity. However, as to all other issues, it is my opinion that the Conservancy complied with the requirements of the APRA and your request for “all public records from 1987 to the present day” was not reasonably particular.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Robert A. Young