



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 17, 2012

Ms. Nancy Green-Cruser  
6520 East County Road 920 North  
Butlerville, Indiana 47223

*Re: Formal Complaint 12-FC-166; Alleged Violation of the Access to Public Records Act by the Jennings County Auditor and Animal Control*

Dear Ms. Green-Cruser:

This advisory opinion is in response to your formal complaint alleging the Jennings County Auditor ("Auditor") and Animal Control Board ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John D. Gay, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you alleged that on May 25, 2012, you submitted the following written request to Animal Control Officer James Brewner for a copy of the itemized bills for his county supplied cell phone, Greathouse Hardware bills and receipts, and Wal-Mart bills and receipt related to his work for the Board. You further allege that you submitted a similar request to the Auditor and have received no records in response.

In response to your formal complaint, Mr. Gay advised that Mr. Brewner responded to your May 25, 2012 request within twenty-four hours of its receipt and advised you that all record would be available for pick-up on Friday, June 1, 2012. Mr. Gay stated that you never came to pick up the records, but sent Mrs. Sharon Armstrong, who retrieved the records on your behalf. Copies of the records that were provided to Mrs. Armstrong are enclosed.

As to the records that were provided, Mr. Gay stated that it would appear the Wal-Mart and GreatHouse bills satisfied your request. As to the cell-phone bills, the enclosed records were provided to Mrs. Armstrong in response to your request. Mr. Brewner delivered all records in his possession that he believed to be responsive to your request. Page 4 of the bills that were in his possession, which were not originally provided, are enclosed. The pages omitted only contain general information from Verizon Wireless and various services offered by the company. The balance of the billing document, pages

1 and 2, have been attached to his monthly claim and were in possession of the Auditor. The Auditor maintains that it provided various records to Mrs. Anderson, apparently for you, in the past, and the claims of the Board are believed to have been delivered.

As to the issues regarding the sufficiency of the claims that have been processed by the Auditor, Mr. Gay advised that the Indiana State Board of Accounts (“SBOA”) has reviewed the records and found no irregularities.

### 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 Auditor and Board are public agencies for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Auditor’s and Board’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 24 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 (7) 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 include information regarding how or when the agency intends to comply.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines on both potential outcomes. See *Opinion of the Public Access Counselor 11-FC-80*. Your formal complaint alleges that neither the Auditor nor Board has provided any records in response to your request. The Board has provided that Mr. Brewner responded to your public records request on the date of its receipt, and informed you that the records could be picked up on June 1, 2012. The Board advised that Mrs. Armstrong picked up the documents on your behalf sometime on or after June 1, 2012. If Mrs. Armstrong did not pick up the records on your behalf, copies of the records that were requested are now enclosed. As such, if the Board responded to your request and provided all records to Mrs. Armstrong on your behalf, it is my opinion that the Board has not violated the APRA. As to your allegations that the Auditor is not in compliance with I.C. 5-11-10.1-1.6(c), such issues are outside the purview of this office. I would encourage you to follow up with the SBOA as to this portion of your request. The Auditor has provided that the SBOA has reviewed the invoices in question and found no irregularities.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Board provided all records that were responsive to your request to Mrs. Armstrong, who appeared on your behalf, then the Board did not violate the APRA.

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" following.

Joseph B. Hoage  
Public Access Counselor

cc: John D. Gay