



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

January 9, 2013

Mr. Robert Edinger
1484 N 700 E
Elwood, Indiana 46036

Re: Formal Complaint 12-FC-371; Alleged Violation of the Access to Public Records Act by the Tipton County Auditor

Dear Mr. Edinger:

This advisory opinion is in response to your formal complaint alleging the Tipton County Auditor ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John H. Brooke, Attorney, responded in writing on behalf of the Auditor to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on November 9, 2012 you submitted a written request for records to the Auditor seeking the agency's complete general ledger and certain audio recordings. On November 15, 2012, you received the audio recordings that had been requested and were informed that the general ledger would be sent to you electronically. On November 21, 2012, you inquired with the Auditor regarding your request and were informed that the agency was going to confirm whether the general ledger contained any information considered confidential pursuant to state law. On December 7, 2012, you were informed that the general ledger would be provided, most likely by Monday, December 10, 2012. As of December 31, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you still have yet to receive a copy of the general ledger.

In response to your formal complaint, Mr. Brooke advised that the Auditor promptly and properly acknowledged the receipt of your request for records. At no time has the Auditor even denied your request or provided any indication that it intended to deny your request. Mr. Brooke provided that the general ledger is a substantial and extensive document maintained by the County for its financial concerns. The general ledger consists of over 700 pages of text, the majority of which contains identifying and confidential information that must be redacted prior to disclosure. A complete and thorough review of the general ledger takes a substantial amount of time.

The Auditor's office consists of four employees, including the Auditor. The Auditor is responsible for virtually all of the financial records of the County as well as making sure that various units of government receive their appropriate share of property tax and other distributions. The Auditor's office is very busy with its everyday activities and therefore could not ignore its other responsibilities after receiving your request. The Auditor believes that the process of reviewing the record will be completed very shortly and an email will be sent to you at that time for information regarding any fees associated with the disclosure of the general ledger.

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 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 Auditor's public records during 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 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). 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. 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).

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* 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. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being

reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172.* Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121.*

Here, your original request for records was submitted to the Auditor on November 9, 2012. On November 15, 2012, all records responsive to your request for audio recordings were provided. On December 7, 2012, the Auditor promptly responded to your email inquiry regarding the status of your request and stated the general ledger would most likely be provided by December 10, 2012. On December 13, 2012, the Auditor failed to respond to your email inquiry regarding the status of your request. At no time did the Auditor deny your request or signify its intent to deny your request. I would note to the Auditor that if it conveys to a requestor that records will be provided on a specific date and for regardless of the reason, the agency is unable to fulfill this obligation; the agency should take the initiative and inform the requestor that there has been a delay. While failing to take such steps does not automatically conclude that the agency has violated section 3(b) of the APRA, many of the issues raised in the formal complaint regarding the timeliness of the Auditor's response could have been alleviated by acting in such a fashion. *See Opinions of the Public Access Counselor 11-FC-260 and 12-FC-327.* Mr. Brooke has advised that the general ledger itself is an extensive document, consisting of over 700 pages, and the Auditor is required under I.C. § 5-14-3-10 to redact any confidential information maintained in the document. In addition to responding to your request, the Auditor is required to maintain the normal duties of its office, including responding to any other request for records that are received. In light of the breadth of the request, the fact that the audio recordings responsive to your request were promptly provided, the amount of time required to properly redact all confidential information, and that the Auditor has now indicated that the general ledger will be disclosed very shortly upon payment of any fees, it is my opinion that the Auditor has currently complied with the requirements of I.C. § 5-14-3-3(b) in responding to your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Auditor has currently complied with the requirements of I.C. § 5-14-3-3(b) in providing all records within a reasonable period of time in response to your request.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Tipton County Auditor, John H. Brooke