



STATE OF INDIANA

MICHAEL R. PENCE, 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

May 22, 2013

Rick Volbrecht
9221 Parkway Drive
Highland, Indiana 46322

Re: Formal Complaint 13-FC-128; Alleged Violation of the Access to Public Records Act by the Lake County Auditor

Dear Mr. Volbrecht:

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

BACKGROUND

On April 19, 2013, you submitted a written request for records to the Auditor for a copy of the audio recording of the April 9, 2013 Lake County Council public meeting. As of April 25, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive a copy of the recording.

In response to your formal complaint, Mr. Szarmach advised that on behalf of the Auditor, he confirmed the receipt of your request in writing three days after its receipt. On April 26, 2013 you appeared at the Auditor's office and made a recording of the audio from the Council meeting with your personal tape recorder. You later indicated in writing to Mr. Szarmach that your request was moot as you had received a copy of the record requested.

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 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). 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 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 among the factors to be considered in determining if the requirements of section 3(b) 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 redacted prior to disclosure. 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, you submitted your request to the Auditor on April 23, 2013. You were allowed to make a copy of the record requested on April 26, 2013. You have indicated that as you were able to make a copy of the record with your own equipment, your request was moot. It is my opinion that the Auditor complied with the requirements of section 3(b) of the APRA by providing all records responsive to your request within three days of the receipt of your original request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Auditor complied with the requirements of section 3(b) of the APRA by providing all records responsive to your request in a reasonable period of time.

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: Ray Szarmach