



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

February 19, 2013

Cory L. Klinedinst
311 E County Road 700 N
Frankfort, Indiana 46041

Re: Formal Complaint 13-FC-22; Alleged Violation of the Access to Public Records Act by the Clinton County Auditor

Dear Mr. Klinedinst:

This advisory opinion is in response to your formal complaint alleging the Clinton County Auditor ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Cathy J. Hamilton, Auditor, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that prior to January 2, 2013, you were employed as the Clinton County EMS Director. On January 2, 2013, the Board conducted an executive session and requested that you attend. All three members of the Board, the County Attorney, the County Sheriff, and a human resources consultant retained by the County were present at the executive session. You provide that you were terminated at the executive session, with Board President George Evans reading to you a prepared statement. On January 17, 2013, you hand-delivered a written request for records to the Auditor, to which the Auditor date stamped the original. You sought a copy of the prepared statement made by Board President Evans at the January 2, 2013 executive session, minutes or memoranda from the executive session, your payroll change notice form, and minutes of the Board's public meeting held on January 2, 2013. As of January 25, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Auditor has failed to timely provide any records that were responsive to your request.

In response to your formal complaint, Ms. Hamilton advised that you personally delivered your written request for records on Thursday, January 17, 2013. On Tuesday, January 22, 2013, all records responsive to your request were mailed to you by the Auditor. An additional copy of the records is enclosed for your reference.

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 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). 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, you hand-delivered a written request for records to the Auditor on January 17, 2013. On January 17, 2013, the date of its receipt, the Auditor provided you with a date-stamped copy of your written request for records. The Auditor was required to respond, in writing, within twenty-four hours of receipt of your hand-delivered written request and complied with section 9 of the APRA when it provided you with a date-stamped copy of your original request on the date of its receipt. *See Opinions of the Public Access Counselor 05-FC-176; 11-FC-84; 11-FC-308; 12-FC-63; 12-FC-316.*

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(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*

The Auditor mailed all records responsive to your request on Tuesday, January 22, 2013; five (5) days after receiving your original request. 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. As noted *supra*, nothing in the APRA indicates that an agency's failure to provide "instant access" to the requested records constitutes a denial of access.

CONCLUSION

Based on the foregoing, it is my opinion that the Auditor 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 stylized "H".

Joseph B. Hoage
Public Access Counselor

cc: Cathy J. Hamilton