



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

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

July 27, 2016

Mr. Ken de la Bastide  
1133 Jackson Street  
Anderson, Indiana 46016

*Re: Formal Complaint 16-FC-151; Alleged Violation of the Access to Public Records Act by the Anderson Housing Authority*

Dear Mr. de la Bastide:

This advisory opinion is in response to your formal complaint alleging the Anderson Housing Authority (“Authority”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The Authority responded to your complaint via Mr. Michael Palmer, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 28, 2016.

## BACKGROUND

Your complaint dated June 20, 2016, alleges the Anderson Housing Authority violated the Access to Public Records Act by improperly denying your records request.

On April 19, 2016 a request was made to the Authority for information detailing how the Authority spends HUD grants. Your request was acknowledged on April 28, 2016. You received an email on May 24, 2016 from an attorney for the Authority informing you he would look into why your request was still unfulfilled. You received no further response.

## 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 Indiana Code § 5-14-3-1*. The Anderson Housing Authority is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Authority’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. The APRA does not specify a time for production or inspection of responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions. The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

In its response, the Authority asserts it is currently embroiled in litigation, detracting from the time and resources available to respond to records requests. While this is a permissive circumstance which would elongate the time in responding to your request, the Authority did not inform you there would likely be some delay in procuring the information you sought. The statute does not require an agency to set a rigid timeline or provide an explanation for any delay. That being said, I strongly encourage agencies to communicate with requesting parties in the interest of establishing good faith and transparency. Additionally, early communication may help an agency ascertain with greater exactitude which documents are being sought so a reasonable particularity issue does not arise three months after the request was received.

It is my hope the documents you received on July 22, 2016 are responsive to the request you submitted. In the event you seek additional documents, Mr. Palmer has offered to speak by phone in order to fully identify your request.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Michael Palmer, Esq.