



# STATE OF INDIANA

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November 3, 2016

Mr. Michael R. Shaver  
3799 Steeplechase Drive  
Carmel, Indiana 46032

*Re: Formal Complaint 16-FC-240; Alleged Violation of the Access to Public Records Act by the Indiana Department of Workforce Development*

Dear Mr. Shaver:

Please allow this correspondence to serve as a response to your formal complaint alleging the Indiana Department of Workforce Development (“DWD”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. DWD did not respond in writing, but did cooperate in my investigation via telephone.

Your complaint as I understand it, is that DWD failed to produce an additional copy of documentation in your possession. The purpose of your public access request is to use the documentation to dispute an alleged overcharge.

I have had the opportunity to speak to DWD’s administration to gain a better understanding of the issue. You were issued a notice of overpayment in 2012. This indicated you had a credit within the system and could apply the overage during the next credit rate liability period. At some point, you were subsequently issued a second notice for the same credit. My understanding is that you regarded this second notice as a second credit. You attempted to use both notices as two (2) separate credits for an existing liability and this created a shortfall, because only one (1) existed with DWD’s system. This shortfall spiraled into a series of penalties and interest and compounded the small shortfall into a significant sum.

The public access dispute comes into play when you requested a copy of both notices from DWD and they did not produce them. DWD’s position is that it does not retain copies of notices sent to taxpayers. They are automatically generated, however, a duplicate copy is not retained in-house. Any actual credit would be reflected with its internal record-keeping system electronically in a database or program. The program is designed to generate the notices and a paper copy is forward to you. No paper copy is retained by the agency.

The issue of whether the second credit noticed caused sufficient confusion to void any penalties is beyond the scope of my Office and is appropriate for an administrative law judge review. It appears as if you have begun to initiate an appeal before a hearing officer. I do not believe DWD is attempting to hide anything -the documentation you seek simply does not exist. I do believe, however, there is a valid question as to whether the notices should be retained in-house. Regardless of an Agency's record-keeping system, the definition of public record is as follows:

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code § 5-14-3-2(r).

As for the retention of documents, the Indiana Archives and Records Administration ("IARA") handles such matters. I will work with them and DWD to ensure records are being properly maintained by DWD. In the meantime, the controversy is germane to your appeal of the agency action and should be resolved by an administrative law judge. I do not want to compromise your case by infringing on an ALJ's sole jurisdiction over the proceeding. I would be more than happy to speak with you by telephone, however, should you seek further clarification.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor