



# STATE OF INDIANA

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April 7, 2016

Mr. Ron Richmond  
1424 N. Pennsylvania Street  
Indianapolis, Indiana 47374

*Re: Formal Complaint 16-FC-45; Alleged Violation of the Access to Public Records Act by the Madison County Board of Commissioners*

Dear Mr. Richmond:

This advisory opinion is in response to your formal complaint alleging the Madison County Board of Commissioners, (collectively known as “Commissioners”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. The Commissioners have responded via counsel, Mr. Michael E. Farrer, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 2, 2016.

## BACKGROUND

Your complaint dated March 2, 2016 alleges the Madison County Board of Commissioners violated the APRA by failing to provide you with a timely production of records.

On or about November 20, 2015, you requested an opportunity to inspect or copy records relating to legal representation of the County Highway Department. You were given several dates on which you were to receive the records, but those have long since elapsed. As of the filing of your formal complaint, you have yet to receive any documentation requested.

On March 7, 2016, the Commissioners responded by stating a search was initiated pursuant to your complaint, however, no responsive records exist.

## 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 Ind. Code § 5-14-3-1. The Madison County Board of Commissioners is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-

2(n)(1). Accordingly, any person has the right to inspect and copy the Commissioner's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

While no records may exist pursuant to your request, you are still entitled to a timely response regardless of whether it is a denial or a production of documents. See Ind. Code § 5-14-3-3. I cannot speculate whether the statements that no documents exist are accurate, only that the Commissioners took nearly three-and-a-half months to communicate their non-existence. This is not reasonable under the circumstances. Legal invoices should be fairly routine public records to curate. A good steward of public records should be able to confirm their existence (or non-existence) easily and in a timely manner.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Madison County Board of Commissioners has violated the Access to Public Records Act.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. Michael E. Farrer, Esq.