



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

July 31, 2009

Mary Whitaker  
314 East Beaver Street  
Morocco, Indiana 47963

*Re: Formal Complaint 09-FC-155; Alleged Violation of the Access to Public Records Act by the Newton County Council on Aging and Community Services*

Dear Ms. Whitaker:

This advisory opinion is in response to your formal complaint alleging the Newton County Council on Aging and Community Services ("Agency") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Agency's response to the complaint is enclosed for your reference. It is my opinion the Agency has not violated the APRA.

## BACKGROUND

You allege that on March 25, 2009 you sent to the Agency a request for copies of records. The Agency sent you a letter dated March 30 in which the Agency indicated it would provide you with the number of pages and the copy fee for your request before providing you the copies. You filed the present complaint on July 9, alleging you have received no further communication from the Agency.

The Agency responded to the complaint by letter dated July 20 from attorney Jessica Hoover. The Agency contends you were notified by letter of the number of pages you requested as well as the amount due for copy fees. The Agency does not provide the date of or a copy of the letter but indicates you have not responded to the letter and have not remitted payment for the copies. Further, the Agency claims some of the records are nondisclosable. The Agency also indicates that you have filed a small claims action in a related matter and have requested access to the records as a part of that action. As such, the Agency assumed you were no longer pursuing your March 25 request.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Agency is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 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 days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here, the Agency initially responded to your request within seven days of receipt of the request, in compliance with I.C. § 5-14-3-9(b). The Agency contends it sent you a letter indicating the number of pages and cost of copying the records but that you have not responded. The Agency may require advance payment of copying costs. I.C. § 5-14-3-8(e). If the Agency has provided you with the copy cost, the Agency has fulfilled its obligation under the APRA until you remit payment. At that point, the Agency shall provide the copies of the disclosable records or disclosable portions of records within a reasonable amount of time.

To the extent the Agency denies you access to any records you have requested, the Agency must provide a statement of the specific exception(s) to disclosure allowing or requiring the agency to deny access. *See* I.C. § 5-14-3-9(c).

#### CONCLUSION

For the foregoing reasons, it is my opinion the Agency has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Jessica Hoover, Blaney & Walton  
Debra Wessels, Newton County Council on Aging and Community Services