



# STATE OF INDIANA

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March 6, 2009

Terry Landgraf  
4946 Indiana Beach Road  
Monticello, Indiana 47960

*Re: Formal Complaint 09-FC-47; Alleged Violation of the Access to Public Records Act by the White County Board of Aviation Commissioners*

Dear Mr. Landgraf:

This advisory opinion is in response to your formal complaint alleging the White County Board of Aviation Commissioners ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your requests for access to records. It is my opinion the Board violated the APRA if it received your requests and did not respond to the requests within the prescribed timeframes.

## BACKGROUND

You allege that you have sent to the Board four requests for access to a number of records. You allege you sent the requests on November 24 and 29, 2008 and on January 9 and 19, 2009. You allege you have received no response as of the date you filed the present complaint. Your complaint was postmarked on February 7, and my office received it on February 11. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Board responded to the complaint by letter dated February 16 from Philip Gutwein, President of the Board. The Board contends the minutes of the Board meetings are available for inspection between 8:00am and 5:00pm seven days each week at the White County Airport Terminal building. The Board further contends that it has never had formal hangar leases.

## 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 Board 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 Board 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). If the request is made in person or by telephone and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you sent four different requests to the Board, and the Board did not respond to any of those requests. The Board does not dispute it received the requests. If the Board received your requests, the Board had the duty to respond to the request within the timeframe prescribed by I.C. § 5-14-3-9. If the office failed to do so, the agency violated the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Board violated the APRA if the office received your requests and did not respond to the requests within the prescribed timeframes.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Philip Gutwein, White County Board of Aviation Commissioners