

August 1, 2007

Samuel Shaw
627 H Street
Bedford, Indiana 47421

Re: Formal Complaint 07-FC-191; Alleged Violation of the Access to Public Records Act by the Warren County Auditor

Dear Mr. Shaw:

This is in response to your formal complaint alleging the Warren County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. A copy of the Auditor's response to your complaint is enclosed for your reference. I find that the Warren County Auditor has not violated the APRA relative to the minutes you requested if indeed you only inquired as to whether they were approved. I further find the Auditor must provide you access to the portions of the county phone bills required to be disclosed under the APRA. Furthermore, the Auditor did violate the APRA relative to the requested phone records if she did not respond to you within twenty-four business hours.

BACKGROUND

In your complaint you allege that on June 12, 2007 you orally submitted a request for access to the minutes of the June 12, 2007 meeting of the Warren County Board of Commissioners. You indicated you called the Auditor on or about June 19 to inquire about the status and were told you could not have a copy until the minutes were approved. You indicated you called the Auditor on or about June 19 and also requested a copy of the county phone bill and were told to contact the county attorney. You mailed your complaint on June 27, and we received it on July 2.

The Auditor responded to your complaint on July 5. The Auditor indicated she did not personally speak with you regarding these matters but that you do call the office several times a day. The Auditor indicates the nature of your call regarding the June 12 minutes was to inquire whether they were approved, to which the Auditor's staff indicated they were not. The Auditor indicates her staff is aware draft minutes are public record and has provided you with draft

minutes in the past. As to the phone bill you requested, the Auditor indicated there has been some question among county officials as to whether the phone records are public record. The Auditor indicated she contacted my predecessor on June 13 to inquire about disclosure of the phone records but did not receive a response to her question. The Auditor asserts the request for the phone bill was not denied but was pending while awaiting a response from my predecessor.

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

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made orally, a denial occurs when twenty-four hours have elapsed since the request and the public agency has refused inspection. IC 5-14-3-9(a). It has long been the opinion of the Office of the Public Access Counselor that the twenty-four hours in this provision refers to twenty-four business hours. If the request is made orally, the public agency may deny the request orally. IC 5-14-3-9(c).

As to your first request, the facts provided by you differ from the facts provided by the Auditor. If you indeed requested a copy of the minutes or the draft minutes, either is subject to disclosure under IC 5-14-3-3. There exists no exception applicable to the draft minutes at issue here, and the Auditor acknowledges such. If you requested the minutes orally, the Auditor is required to have responded to your request within twenty-four business hours. The Auditor, though, indicates you did not request a copy of the minutes or draft minutes but instead called to inquire whether they had been approved.

As to the copy of the phone bill you have requested, if you requested the record orally, the Auditor should have responded to your request within twenty-four business hours. 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. The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

In this case, the Auditor questioned whether the phone bills were required to be disclosed under the APRA. The Auditor and other county officials are concerned about the confidentiality of some of the information contained in the phone bills. If the requested records contain nondisclosable information, the Auditor should separate the non-disclosable portion of the records

and provide access to the disclosable portions. IC 5-14-3-6(a). The Auditor may do this by redacting the phone numbers and other information related to the phone calls which would be considered non-disclosable under the APRA. If the phone bills do contain non-disclosable information or information which may be disclosed at the discretion of the agency and the Auditor denies access to those portions, the Auditor bears the burden of providing the statutory authority for not disclosing those records.

CONCLUSION

For the foregoing reasons, I find that the Warren County Auditor has not violated the APRA relative to the minutes you requested if indeed you only inquired as to whether they were approved. I further find the Auditor must provide you access to the portions of the county phone bills required to be disclosed under the APRA. Furthermore, the Auditor did violate the APRA relative to the requested phone records if she did not respond to you within twenty-four business hours.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Billie Tumey, Warren County Auditor