



# STATE OF INDIANA

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June 17, 2010

Ms. Elrita C. Puckett  
13811 Lakemont Ct.  
Louisville, KY 40299

*Re: Formal Complaint 10-FC-131; Alleged Violation of the Access to Public Records Act by the Indiana Department of Revenue*

Dear Ms. Puckett:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Revenue (the "DOR") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The DOR's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested a copy of certain records from the DOR on April 5, 2010, but that the DOR had not responded to your complaint as of May 10, 2010. In response to your complaint, the DOR forwarded a copy of its May 25, 2010, letter to you. I understand that the DOR enclosed with that letter all records responsive to your request.

## 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." I.C. § 5-14-3-1. The DOR does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the DOR's public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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 (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the DOR failed to respond to your written request within seven (7) days, the DOR violated the APRA.

I understand that the DOR has now sent you your requested records that the DOR maintains. The DOR notes that it cannot produce some of the requested records because they are records of Premier Credit. Unless Premier Credit maintains those records for or on behalf of the DOR, the DOR did not violate the APRA by failing to produce those records. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*. I trust the DOR’s disclosure of the records it maintains resolves your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the DOR failed to respond to your written request within seven (7) days of receipt, the DOR violated Section 9 of the APRA. If the DOR has now disclosed to you all records maintained by the DOR and on the DOR’s behalf, the DOR did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Collin G. Davis