



# STATE OF INDIANA

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May 22, 2013

Rick Volbrecht  
9221 Parkway Drive  
Highland, Indiana 46322

*Re: Formal Complaint 13-FC-127; Alleged Violation of the Access to Public Records Act by the Lake County Council*

Dear Mr. Volbrecht:

This advisory opinion is in response to your formal complaint alleging the Lake County Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Ray Szarmach, Attorney, responded on behalf of the Council. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you provide that on April 11, 2013, you submitted a written request to the Council for an audio recording of the Council meeting that occurred on April 9, 2013. On April 11, 2013, Ms. Barczak contacted you by phone to acknowledge the receipt of your request. On April 16, 2013, Ms. Barczak contacted you and inquired whether you were still interested in receiving a copy of the recording. You verified at that time you still desired a copy, at which point you were directed to contact the Auditor's office for assistance. On April 19, 2013, you submitted an identical written request for records to Peggy Katona, Lake County Auditor. As of April 25, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive a copy of the recording.

In response to your formal complaint, Mr. Szarmach advised that the Council received your written request via fax on April 11, 2013. On the date of receipt, Ms. Barczak orally confirmed the receipt of your request, and further informed you that the County Auditor is the keeper of the Council's records. Ms. Barczak informed you that she would follow up with the Auditor regarding your request. On April 23, 2013, the Auditor received your identical request. On April 26, 2013, Mr. Szarmach responded to your request on behalf of the Auditor via email. Mr. Szarmach advised you that the Auditor was currently working on the minutes and completing the transcription process. A copy of the recording would be made available no later than May 6, 2013.

Pursuant to I.C. 36-2-9-8, the County Auditor is the official secretary for the Lake County Council. All records of the Council are kept in the Auditor's offices, which includes the audio recordings of the Council's meetings. The recordings are transcribed after each meeting and presented to the Council at the following month's meeting. The meetings are recorded on low speed equipment and the minutes can only be transcribed by special equipment located in the Auditor's offices. On April 26, 2013, you came to the Auditor's office and recorded a copy of the audio recording via your personal tape recorder. You thereafter sent a message to Mr. Szarmach that your request was moot.

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

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested

records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121.*

Here, you filed your request for records on April 11, 2013. The Council contacted you immediately upon receipt of your request and acknowledged its receipt. You thereafter filed a request with the Auditor for a copy of the recording. Mr. Szarmach acknowledged the receipt of your request in writing and advised that the Auditor was the keeper of all public records of the Council. He explained that the Auditor creates the minutes of the Council's meetings from the audio recordings, which had yet to be completed at the time of your request. On April 26, 2013, you appeared at the Auditor's Offices and recorded a copy of the Council meeting requested. Based on the Council's responsiveness to your formal complaint and that you are now in possession of the record requested, it is my opinion that the Council complied with section 3(b) of the APRA by providing all records responsive to your request in a reasonable period of time.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Council complied with section 3(b) of the APRA by providing all records responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Ray Szarmach