



STATE OF INDIANA

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March 27, 2013

Mr. Michael A. Christianson
DOC 135489
3038 W 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 13-FC-89; Alleged Violation of the Access to Public Records Act by the Office of the Indiana Secretary of State, Business Services Division

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Office of the Indiana Secretary of State, Business Services Division ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jerold A. Bonnet, General Counsel, responded on behalf of the Office. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on February 22, 2013, you submitted a written request to the Office for certain business information to assist you in forming a domestic, nonprofit corporation. As of March 15, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Office has failed to respond to your request in any fashion.

In response to your formal complaint, Mr. Bonnet advised that the Office has no record of receiving your request. Upon being made aware of your request via the formal complaint that was filed, the Office provided copies of all records that were 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." *See* I.C. § 5-14-3-1. The Office 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 Office'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).

The Office maintains that it did not receive your request. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether the Office received your request. Under the APRA, if a 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. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Department did not receive your request, it was not legally obligated to respond to it. Upon being made aware of your request the Department provided all records that were responsive, which I trust is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

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: Jerold A. Bonnet