



# STATE OF INDIANA

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August 27, 2014

Mr. Thomas E. Mason  
4800 S. 930 E.  
Wolcottville, IN 46795

*Re: Formal Complaint 14-FC-160; Alleged Violation of the Access to Public Records Act by the Lagrange County Health Department*

Dear Mr. Mason,

This advisory opinion is in response to your formal complaint alleging the Lagrange County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Mr. Craig Chivers. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 25, 2014.

## BACKGROUND

Your complaint dated July 25, 2014, alleges the Lagrange County Health Department violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On July 10, 2014, you submitted by fax a request to inspect or copy public records of the Department relating to permits and inspections of two named entities. You allege you received a phone call shortly thereafter by Mr. Chivers denying the request because he claimed those specific entities are exempt. It is unclear as to the authority backing up this assertion. You have not received an additional formal written response. The Department responded to your complaint by producing a retail food inspection report for one of the entities<sup>1</sup>. The other entity was not inspected and the County has no records responsive to your request.

## ANALYSIS

<sup>1</sup> Records indicate this inspection was conducted after your initial records request and would not have existed at the time of Mr. Chiver's telephone conversation with you.

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 Ind. Code § 5-14-3-1. The Lagrange County Health Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Ind. Code § 5-14- 3-9(d) states:

if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the 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.

While the denial of your request may have been justified as the records do not exist, the burden remains on the Department to put the denial in writing because your request was delivered via fax. The failure to do so constitutes a technical violation of the Access to Public Records Act. The non-existence of the records mitigates the harm of the violation; however, the Department should be mindful of their obligations in the future.

### CONCLUSION

For the foregoing reasons it is the Opinion of the Public Access Counselor that the Lagrange County Health Department has violated the Access to Public Records Act.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mr. Craig Chivers