



# STATE OF INDIANA

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November 13, 2014

Ms. Amy L. Lavalley  
3802 Farmdale Drive  
Valparaiso, IN 46383

*Re: Formal Complaint 14-FC-243; Alleged Violation of the Access to Public Records Act by the Porter County Auditor*

Dear Ms. Lavalley,

This advisory opinion is in response to your formal complaint alleging the Porter County Auditor (“Auditor”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Auditor has responded to your complaint via Counsel, Mr. Jon A. Schmaltz, Esq. 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 October 15, 2014.

## BACKGROUND

Your complaint dated October 15, 2014, alleges the Porter County Auditor violated the Access to Public Records Act (IC 5-14-3) by improperly denying you access to records.

On or about October 7, 2014 you allegedly emailed a public records request to the Porter County Auditor seeking certain public records. Despite a number of follow-up emails, you did not receive a response.

The Auditor responded by arguing it did not receive your request. The Auditor also has provided a form upon which the public records request can be re-submitted.

## ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Porter County Auditor is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the

Auditor'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).

The Auditor has responded to your formal complaint via counsel by asserting he never received the request. The email account you indicate on your formal complaint form for the Auditor appears to be different from the email address Mr. Schmaltz states as the official Porter County Auditor server. You did not provide a copy of the actual email request so it is difficult for me to determine which address would be correct. If the Auditor did receive it and did not respond, it would be a violation. If it was never received, the Auditor cannot be held accountable for a violation. Without any supporting documentation to the contrary, it appears the Auditor did not receive the request.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Porter County Auditor has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Jon A. Schmaltz, Esq.