



# STATE OF INDIANA

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August 11, 2008

Richard Ullrich  
403 Main Street  
Aurora, Indiana 47001

*Via electronic mail transmission to richardullrichjr@comcast.net*

*Re: Informal Inquiry 08-INF-32*

Dear Mr. Ullrich:

This is in response to your informal inquiry dated August 6, 2008. You write to inquire about records maintained by the City of Aurora which you have requested pursuant to the Access to Public Records Act ("APRA")(Ind. Code 5-14-3). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You pose a number of questions related to the use or non-use of electronic mail (email) by public officials. I have listed your inquiries below, with my opinion in answer to each question directly following the respective question.

1. "If a Department Leader of a Municipal Governmental Agency (Code Enforcement Officer in this case) verbally states that e-mail communications has been received, and, in response to a formal records request by a citizen, the Clerk-Treasurer verbally responds that no records exist, how is the requesting citizen to determine whether requested e-mail communication or documents exists in accordance with I.C. 5-14-3-1 ?

The Access to Public Records Act ("APRA") (Ind. Code 5-14-3) provides that any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The APRA does not, however, require an agency to create records which do not exist. The APRA provides no indication as to how an individual can determine whether records exist other than to require access to all disclosable public records and to place on the agency the burden of proof to sustain a denial of access to records which do exist. *See* I.C. § 5-14-3-3 and I.C. § 5-14-3-1.

2. If an Elected or Appointed Municipal official decides to opt out of e-mail use:

- a) Who is responsible for determining whether or not the Official Website of the Municipality removes the posting of the unused e-mail account to affirm the decision to opt-out of e-mail communication?
- b) Does it better serve the public to leave the e-mail address posted on a website to collect data sent by citizens that may never be viewed by the elected or appointed official?
- c) If the e-mail address of the person opting out remains on an official website, should an auto-responder be put in place informing the public that the elected official has opted-out of e-mail use and prefers telephone and /or written communications along with the telephone number(s) and address(es)?
- d) Should the decision to opt-out be posted without the live e-mail address along with phone & address contact information?

These are matters outside the purview of the public access counselor's office. *See* I.C. § 5-14-4-10, listing powers and duties of the public access counselor; regulation of an agency's forms of communication is not included in those powers and duties. As such, the public access counselor has no authority to determine how an agency communicates with the public or to determine whether an agency's use or lack of use of a particular form of communication is appropriate.

Please do not hesitate to contact this office if we can be of further assistance.

Best regards,



Heather Willis Neal  
Public Access Counselor