



# STATE OF INDIANA

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April 10, 2012

P. Gregory Yeary  
DOC 169399  
1946 W. U.S. 40  
Greencastle, Indiana 46135

*Re: Informal Inquiry 12-INF-17; Filing Action*

Dear Mr. Yeary:

This is in response to your informal inquiry regarding an action to compel disclosure under the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

## BACKGROUND

You have submitted the following inquiry regarding an action to compel disclosure:

"If I make a public records request by mail to a county that is quite a distance across the state, regarding the 'county in which the denial occurred,' can the action be filed in my county of residence, which is where my mail (request for public records) was sent from, and should have been received at?"

## 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. Accordingly, any person has the right to inspect and copy a public agency's 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. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Consequently, a denial of access to public records occurs when the public agency either affirmatively denies you access or fails to respond to the public records request in the timeframe mandated by the APRA.

If a public agency denies access to a public record, then the person who has been denied access may file an action in the circuit or superior court *in the county in which the denial occurred* to compel disclosure of the public record. I.C. § 5-14-3-9(e). In such an action, the court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if the plaintiff substantially prevails, and if the plaintiff filed the action after seeking and receiving an informal inquiry response or advisory opinion. IC § 5-14-3-9(i).

In response to your inquiry, it is my opinion that I.C. § 5-14-3-9(e) would require you to file the action in the circuit or superior court of the county in which the denial occurred. Because a denial is issued by the public agency, the denial occurs in the county where the agency is located.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor