

December 2, 2005; Alleged Violation of the Access to Public Records Act by the Indiana Attorney General

December 2, 2005

Wyndan Skye
P.O. Box 1023
Richmond, Indiana 47375

Re: Informal Inquiry Response; Alleged Violation of the Access to Public Records Act by the Indiana Attorney General

Dear Mr. Skye:

This is an informal inquiry response from the Office of the Public Access Counselor, pursuant to Ind.Code 5-14-4-10(5). This letter is in response to your letter to the Public Access Counselor dated October 27, 2005, which I received on November 1, 2005. You stated that the letter was your formal complaint pursuant to Ind. Code 5-14-5, alleging that the Indiana Attorney General's Office did not adequately respond to your request for information under the Access to Public Records Act, IC 5-14-3.

Under IC 5-14-5, the Public Access Counselor shall determine the form of a formal complaint filed under chapter 5. IC 5-14-5-11. The Public Access Counselor has established a formal complaint form that is readily available on her website, and has been available in hard copy form in her office. On May 9, 2005, you successfully filed a formal complaint with this office utilizing the complaint form, under 05-FC-89. Because you have not filed a formal complaint on the form utilized by the Office of Public Access Counselor, I have treated your complaint as an informal inquiry. This has not prejudiced you, because a person who decides to file a lawsuit to compel a public agency to disclose a record is entitled to attorney fees, court costs, and reasonable expenses of litigation if the person prevails and has received an advisory opinion *or* an informal inquiry response from the Public Access Counselor. IC 5-14-3-9(i)(emphasis added).

You allege that the Indiana Attorney General ("Attorney General") has denied you a record without sufficient justification. Your request was for various records, only some of which you were denied. This opinion concerns your requests #4-9. You asked for a "true and complete copy of the General law as found currently published in the Indiana Statutes at large and/or the specific law as found currently published in the Indiana Code of statutory Laws, along with its

implementing regulation published as a rule in the Indiana Administrative Code, that imposes a compelling mandatory duty upon a private individual citizen of the sovereign state of Indiana to obtain or otherwise possess a:

- Driver's License;
- State Identification Card;
- Either a State-issued Driver License or State Identification Card for the purposes of identification of their legal personal character;
- Either a Driver License or State Identification Card as a condition precedent to obtaining any grant, permit or license, professional or otherwise, that is issued by any agency of the government for the State of Indiana;
- Certification of Report of Birth DS-1350;
- United States Birth Certificate, stamped, sealed or otherwise "certified" by a "county or State Department" or "County or State Board of Health Vital Records/Statistics Division", "U.S. State Department" or "Department" or the "United States Territories" as referred to on the Indiana BMV Agency's Internet Website."

For each of the above items, you state that "if no such law is found to exist in this state, please clearly indicate so in your response."

You allege that Deputy Attorney General DeAnna Brunner stated that "The Office of the Attorney General is not statutorily permitted to provide legal research to the public." You otherwise did not provide me a copy of the response of the Attorney General. You request that my office "investigate and review this matter" and provide you with an administrative hearing and an official written opinion letter.

Your complaint centers only on the substantive response of the Attorney General to your request for a copy of the laws that mandate a particular action be taken by a citizen, or in the event that no such law exists, a statement confirming so. You state that you are entitled to these records, and the Attorney General's failure to identify any laws, or state that no such laws exist, was a deprivation of your right to the public records of the Attorney General.

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A person is required under the APRA to identify the records requested with "reasonable particularity." IC 5-14-3-3(a)(1). A "public record" means any writing, paper, photograph, book or other material that is created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). The Attorney General is a public agency under the APRA. *See* IC 5-14-3-2(l)(1). Therefore, any law books maintained by the Attorney General are public records as defined in the APRA.

You have requested copies of laws contained in the Indiana Code or Indiana Administrative Code (or even the federal codes). Those respective codes are public records of the Attorney General, assuming that the Attorney General maintains those volumes. However, you have not requested a particular part of these books. Rather, you have requested a copy of a particular law, but have not identified that law or laws with reasonable particularity. For

example, if you had been able to identify a law by citation to it, e.g., “IC 5-14-3-4,” you would have been entitled to inspect and copy that part of the Indiana Code within which that citation may be found. In essence, you have asked the Attorney General to conduct legal research for you. Not only that, you have alleged that under the Access to Public Records Act, the Attorney General is required to conduct legal research to identify those statutes or laws you describe.

The Office of the Public Access Counselor has stated several times that the APRA does not require that a public agency conduct research in order to fulfill a nominal request for public records under the APRA. *See Opinions of the Public Access Counselor 01-FC-70; 02-FC-29; 03-FC-146.* The Attorney General is not obligated under the Access to Public Records Act to provide you with copies of laws that meet a certain condition, without your specifying precisely which law you are seeking by reference to the citation. Stated another way, the “law” is not a public record, only the books that contain laws (or any other material) are public records. Hence, where you demand that the Attorney General must “clearly indicate whether no such *law* exists in this state,” no such duty can be found in the APRA. It is only where a public agency has received a reasonably particular request for a record that the public agency should clearly state whether no *record* exists that is responsive to the request.

Moreover, the Attorney General is not obligated to give you a writing that indicates whether a law does or does not exist. A public agency is not required to create a record to satisfy a request for a public record. In my opinion, your complaint against the Indiana Attorney General is without merit. Also, the Public Access Counselor has no authority to provide an administrative hearing on any matter. *See IC 5-14-4.*

Sincerely,

Karen Davis
Public Access Counselor

cc: Deputy Attorney General Greg Zoeller