



# STATE OF INDIANA

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July 14, 2009

Larry Popejoy  
2604 N. Co. Rd. 50 E.  
Logansport, Indiana 46947

*Re: Formal Complaint 09-FC-152; Alleged Violation of the Access to Public Records Act by the Cass County Board of Commissioners*

Dear Mr. Popejoy:

This advisory opinion is in response to your formal complaint alleging the Cass County Board of Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Commissioners' response to the complaint is enclosed for your reference. It is my opinion the Commissioners have not violated the APRA.

## BACKGROUND

You have requested from the Commissioners copies of the audio recordings from four Commissioners meetings held in 2008. You received a letter dated June 19, 2009 from the Commissioners' attorney indicating the Commissioners would provide you access to the recordings. You filed the present complaint on July 6, alleging the Commissioners have denied you access.

The Commissioners responded to the complaint by letter dated July 8 from attorney John Hillis. Mr. Hillis explains that the records are kept on a compact disc which must be retrieved. During the past weeks, the Commissioners' secretary resigned. Mr. Hillis indicates he has worked with the Auditor, who contacted the information technology department, to retrieve the records. The Commissioners indicate the records should be retrieved and copied to a compact disc for you within seven to ten days.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Commissioners are clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public

records of the Commissioners 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).

A request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile transmission and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Commissioners sent you a letter dated June 19 wherein the Commissioners indicated it would “take a little time” to collect the requested records. You filed the present complaint less than three weeks later. In my opinion, the Commissioners have not taken an unreasonable amount of time to provide you access to the requested records.

There is no bright line distinction between what is and is not a reasonable amount of time to produce records in response to a request. If, for instance, you had requested access to a copy of a specific document which was disclosable in its entirety and to which the Commissioners had quick and easy access, three weeks might not be reasonable. Here, though, the Commissioners have been operating without a secretary, and I would guess that person is generally responsible for collecting and providing records in response to requests. Further, the Commissioners needed the assistance of another department (the information technology department) to obtain the records and make an electronic copy for you. In my opinion, the Commissioners have not taken an unreasonable amount of time to provide you access to the audio recordings, so long as the Commissioners make efforts to provide the record(s) to you within the time provided in the July 8 letter to my office.

## CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners have not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: John Hillis, Hillis, Hillis, Rozzi & Knight, L.L.C.  
Dave Arnold, Cass County Board of Commissioners