



**STATE OF INDIANA**  
**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR**  
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July 31, 2013

Mr. Roger A. Baylor  
1117 E. Spring Street  
New Albany, Indiana 47150

*Re: Formal Complaint 13-FC-213; Alleged Violation of the Access to Public Records Act by the Floyd County Health Department*

Dear Mr. Baylor:

This advisory opinion is in response to your formal complaint alleging the Floyd County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Richard R. Fox, Attorney, responded on behalf of the Department. His response is enclosed for your reference. I have granted your request priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

#### BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Department on June 21, 2013. You requested copies of all citations and/or tickets issued by the Department to any vendor, person, company, and/or individual regarding "Temporary Food Service Permits" for the last five years. You asked that all citations be identified as to whether those cited were serving food or alcoholic beverages. The Department acknowledged your request, in writing, on June 25, 2013. As of July 24, 2013, the date you filed your formal complaint, you allege that you have yet to receive any records responsive to your request. You provide the records are necessary in order to present an adequate defense at your appeal hearing to be held on July 25, 2103.

In response to your formal complaint, Mr. Fox advised that you have an attorney representing you in your appeal. Mr. Fox, on behalf of the Department, has provided your attorney with the Department's response within thirty (30) days of receiving your initial request. Further, the Department properly acknowledged the request within seven (7) days of receipt.

#### 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. The Department is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public 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. See 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 within 24 hours, the request is deemed denied. See I.C. § 5-14-3-9(a). 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. See I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here you submitted your request on June 21, 2013 to which the Department responded, in writing, on June 25, 2013. Thus, it is my opinion that the Department complied with the requirements of section 9(b) of the APRA by acknowledging the receipt of your request within seven (7) days.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. See I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. See 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. See I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. See *Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. See *Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. See *Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Mr. Fox advised that the Department has now provided its response to your request to the attorney representing you in your appeal. All records were produced within approximately thirty (30) days of receiving your request and the Department properly acknowledged the request within seven (7) days of receipt. In light of the breadth of the request that was submitted, which sought records from a five-year period; the Department’s ongoing responsibility to maintain its normal duties and obligations; and that all records have now been disclosed, it is my opinion that the Department has

complied with the requirements of section 3(b) in providing all records responsive to your request in a reasonable period of time.

### CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: Richard R. Fox, Tom Harris