

July 23, 2007

David Glass  
7845 Waverly Road  
Martinsville, Indiana 46151

*Re: Formal Complaint 07-FC-177; Alleged Violation of the Access to Public Records Act by the Indiana Department of Revenue*

Dear Mr. Glass:

This is in response to your formal complaint alleging the Indiana Department of Revenue (“IDOR”) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by failing to respond to your requests for records. A copy of IDOR’s response is enclosed for your reference. I find that IDOR did not violate the APRA.

#### BACKGROUND

Your complaint, received by the Public Access Counselor’s Office on June 25, 2007, alleges IDOR violated the APRA by not responding to your request of June 2, 2007 for any internal written communications, including electronic mail, created within IDOR from January 1, 2004 to present that pertains in any manner to Enguard, Inc.

In response to your complaint, IDOR indicates it received your request on June 6, 2007. It was then forwarded to the appropriate person within IDOR to handle the request. On June 8, 2007, Douglas Klitzke sent you a response indicating IDOR was assembling the requested information and would forward it to you as soon as possible. IDOR indicates the letter may not have gone in the mail until June 11.

#### ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map,

photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

IDOR is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(2). Accordingly, any person has the right to inspect and copy the public records of IDOR during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b). It has long been the opinion of the Office of the Public Access Counselor that “response” in this provision does not equal production of the records. The response could contain an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

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. IC 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. IC 5-14-3-7(c). The APRA sets forth no prescribed timeframe when the records must be produced by a public agency. The Office of the Public Access Counselor has said 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 is necessary to determine whether the agency has produced records within a reasonable timeframe.

In this case, the IDOR received your request on June 6. The response was written on June 8 and left the office in the June 11 mail. This is five days after receipt, well within the prescribed time for response to a written request for records. The IDOR has not denied access and has indicated the office is assembling the records for you. As such, the IDOR has not violated the APRA.

#### CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Revenue did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Stephanie McFarland, Indiana Department of Revenue