



# STATE OF INDIANA

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May 2, 2011

Mr. John R. Craig  
11035 Broadway, Suite B  
Crown Point, IN 46307

*Re: Formal Complaint 11-FC-108; Alleged Violation of the Access to Public Records Act by the Lake County Auditor*

Dear Mr. Craig:

This advisory opinion is in response to your formal complaint alleging the Lake County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that you requested access to “a list of tax sale bidders required to be kept pursuant to IC 6-1.1-25-8. . . .” You claim that the Auditor “has refused to turn over said documents within the statutory timeframe required of 24 hours or provide explanation as required.”

My office forwarded a copy of your complaint to the Auditor, but as of today we have not yet received a response.

## 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 Auditor does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Auditor’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. 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. Your complaint does not specify whether you submitted your request in person or via the telephone, or by mail, facsimile or email. However, because you argue that the Auditor should have responded to your request within 24 hours, I assume that you submitted your request either in person or via the telephone. Regardless, if the Auditor failed to respond to your request within the applicable timeframe, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the Auditor's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Auditor, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Auditor has not provided a justification for withholding the records at issue here, it is my opinion that the Auditor has failed to sustain its burden.

If the Auditor cannot justify withholding the records under the APRA, I encourage the Auditor to release the records to you as soon as possible. To the extent the Auditor persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Auditor to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

## CONCLUSION

For the foregoing reasons, it is my opinion that the Auditor violated the APRA if it failed to respond to your request as required by section 9 of the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Peggy Katona