



# STATE OF INDIANA

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September 21, 2011

Cameron Pruett  
D.O.C. # 118715  
P.O. Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 11-FC-209; Alleged Violation of the Access to Public Records Act by the Wayne County Commissioners*

Dear Mr. Pruett:

This advisory opinion is in response to your formal complaint alleging the Wayne County Commissioners ("County") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Legal counsel, Ronald L. Cross responded on behalf of the County. His response is enclosed for your reference.

## BACKGROUND

In your complaint, you provide that you submitted a written request on July 19, 2011 to the County. On July 27, 2011, the County acknowledged in writing that it had received your records request and would respond in a timely manner. As of August 19, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you allege you have not received any further correspondence from the County.

In response to your formal complaint, Mr. Cross affirmed that your request for records was received by the County on July 20, 2011. Mr. Cross advised that while the individual responsible for receiving records requests on behalf of the County was on vacation, a response to your request was provided by the County on July 26, 2011 upon the individual's return to office. Mr. Cross stated that "he was personally asked to review your request because of its unusual character" in order to guide the County as to a proper response under the APRA. Records relating to County prosecuting attorney and current sitting judges, according to Mr. Cross, had to be thoroughly reviewed prior to their disclosure. Mr. Cross advised that the process of searching and reviewing the records had taken several weeks, with the last responsive email to the overall search being received on September 7. Mr. Cross confirms that all records were forwarded to you on September 16, 2011.

## 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 County 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 County’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). 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 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. *See* I.C. § 5-14-3-9(c). 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. Here, the County responded to your request within the seven-day time period required by the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as 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. 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.*

Here, you requested records relating to the employment of several county legal officials. The response provided by the County illustrates that you requested, among other things, the employment history, educational history, resumes, applications for employment, and the licensures for the county’s legal employees. You filed your request to the County on July 20, 2011. You submitted your formal complaint with this office on August 19, 2011. Although it is not entirely clear from your formal complaint what records you requested, the County’s response indicates that you requested various records that required the County to review and examine, in whole or in part, what was disclosable

under the APRA. The County not only has to collect the records in response to your request, the APRA *requires* the County 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).

Under the circumstances provided, it is my opinion that County has not acted unreasonably. Under the APRA, a public agency shall “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). *See also Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *see also Opinion of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests). Because of the agency’s statutory requirement to review and separate non-disclosable and disclosable information contained in the records, I do not believe the County took an unreasonable amount of time to collect, review, and reproduce the records in light of the extensive nature of your request.

I would make note that 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 Opinion of the Public Access Counselor 06-FC-184* and *08-FC-56*. I would suggest to the County that in the future, as records become available for disclosure in response to an extensive request, after having been retrieved and reviewed, that the records be provided at that time.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the County did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage  
Public Access Counselor

cc: Ronald L. Cross