



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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May 23, 2012

Randall S. Tison  
DOC 127788  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-130; Alleged Violation of the Access to Public Records Act by the Department of Child Services-Posey County Office*

Dear Mr. Tison:

This advisory opinion is in response to your formal complaint alleging the Department of Child Services – Posey County Office (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Susan L. Blackburn, Local Office Director, responded on behalf of the Department. Her response is enclosed for your reference.

## BACKGROUND

On May 3, 2012, you allege that you submitted a written request for records to the Department pursuant to the APRA. As of May 21, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that you have yet to receive a response from the Department.

In response to your formal complaint, Ms. Blackburn advised that the Department did not have any audio records that were responsive to your request. Further, all written records were forwarded to the Department’s Vanderburgh County Offices. Thus, the Department has forwarded your request to Vanderburgh County so that it may provide any records that are responsive, minus any applicable exceptions.

## 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 twenty-four 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 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. If the Department failed to respond to in writing to your request within seven (7) days of its receipt, then it violated the requirements of section 9 of 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. 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.*

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56.* Here, the Department’s Posey County Office, to whom you submitted the request, advised that no audio records were ever maintained that were responsive to your request. Further, all written records were forwarded to the Department’s Vanderburgh County Offices. As such, your request was forwarded to the Vanderburgh County. As the Department has provided that it has



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diligently researched your request, established that no audio record was ever maintained, that the Posey County Office no longer maintained any written records, and thereafter forwarded the request to the appropriate local office, all within seventeen (17) days of receiving your request, it is my opinion that that the Department has currently complied with the requirements of producing all records within a reasonable period of time.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department acted contrary to the APRA if it failed to respond in writing to your written request for records within seven (7) days of its receipt. As to all other issues, it is my opinion Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Susan L. Blackburn