



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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February 28, 2012

Gary Otto  
5124 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 12-FC-57; Alleged Violation of the Access to Public Records Act by the Indiana Judicial Commission*

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Indiana Judicial Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jeffrey S. Wiese, Attorney, responded on behalf of the Commission. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Commission on February 5, 2011 for the dates the Commission received your previously filed complaints and the dates you listed on your signed complaints. You allege that the Commission has failed to respond in any fashion to your request for records.

In response to your formal complaint, Mr. Wiese advised that Commission responded to your request on February 24, 2012 and copies of all records that you have previously filed with the Commission were mailed to you on February 27, 2012.

## 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 Commission 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 Commission'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).

Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed by the public access counselor in a number of prior opinions. *See Opinions of the Public Access Counselor 99-FC-21 and 00-FC-15* for two examples. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request.

*See Opinion of the Public Access Counselor 04-FC-38* (2004). In reviewing your request, it appears that you requested information (i.e. dates certain complaints were received by the Commission or dates listed on previously filed complaints) rather than records. Public agencies are not obligated to create records in response to a request or to answer generalized inquiries pursuant to the APRA. *See Opinion of the Public Access Counselor 10-FC-120*. In response to your request for information, the Commission has answered all of your inquiries regarding your previous filed complaints. As such, it is my opinion that the Commission did not violate the APRA.

#### CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized and cursive.

Joseph B. Hoage  
Public Access Counselor

cc: Jeffrey S. Wiese