



# STATE OF INDIANA

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April 10, 2012

Mr. Andrew Straw  
64711 Apple Ridge Road  
Goshen, Indiana 46526

*Re: Formal Complaint 12-FC-69; Alleged Violation of the Access to Public Records Act by the South Bend Housing Authority*

Dear Mr. Straw:

This advisory opinion is in response to your formal complaint alleging that the South Bend Housing Authority (“Authority”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Larry LaTarte, Attorney, responded on behalf of the Authority. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Authority on February 26, 2012. As of March 16, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that you have yet to receive any response.

In response to your formal complaint, Mr. LaTarte advised that the Authority has no record of receiving a records request from you.

## 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 Authority 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 Authority’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).

As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Authority received your request. Under the APRA, if a 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)*. A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c)*. If the Authority received your written request and did not respond to it pursuant to the timeframes provided in section 9, it violated the APRA. However, if the Authority did not receive your request, it was not obligated to respond to it.

#### CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage  
Public Access Counselor

cc: Larry LaTarte