



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

April 30, 2014

Mr. Joseph Shabazz  
125 Marion  
South Bend, IN 46601

*Re: Formal Complaint 14-FC-69; Alleged Violation of the Access to Public Records Act by the St. Joseph County Board of Commissioners*

Dear Mr. Shabazz,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Board of Commissioners ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Board has provided a response to your complaint via Ms. Kathleen Cekanski-Ferrand, Legal Advisor to the Board. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 31, 2014.

## BACKGROUND

Your complaint dated March 26, 2014 alleges the St. Joseph County Board of Commissioners violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(a).

On March 18, 2014, you served upon the St. Joseph County Board of Commissioners a request for disclosure of public records. Specifically, you sought "total disbursement amount expensed by County for years 2010-2012 and the number of African-American contractors excluding jurors who received awards." The Board acknowledged your complaint on March 18, 2014 and stated the Board does not currently maintain separate documentation pursuant to your request. The Board's response to your formal complaint reiterates that the Board does maintain such data.

## 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 Ind.

Code § 5-14-3-1. The St. Joseph County Board of Commissioners is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Board's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

This Office has long held that public agencies are not required to create records that do not exist in order to satisfy a public records request. If the data you seek were maintained in a separate list or database, the Board would be required to remit the information to you. If it does not exist, they are under no obligation under the APRA to create it or separate aggregate data in list form.

You contend there are Federal regulations requiring the county to separate aggregate data based minority status, but you failed to identify by reference any of those regulations. Regardless of the existence of these regulations, the Office of the Public Access Counselor has no purview to compel the creation of any record and this situation remains a local governance issue.

#### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the St. Joseph County Board of Commissioners has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Kathleen Cekanski-Ferrand