



# STATE OF INDIANA

**MIKE BRAUN, Governor**

**PUBLIC ACCESS COUNSELOR  
JENNIFER RUBY**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
Email: [pac@opac.in.gov](mailto:pac@opac.in.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

March 30, 2026

Re: Complaint 26-FC-015  
James Lamb (Complainant) v.  
Indiana Department of Revenue (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed January 9, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on March 2, 2026, requesting a formal response by March 30, 2026. A formal response, submitted by Attorney Sarah Kamhi, Assistant General Counsel on behalf of Respondent, was received in this office on March 12, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide copies of the requested records.

## **ANALYSIS**

The public policy of 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.” Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

Complainant filed an Access to Public Records (APRA) request on December 4, 2025, for any and all communications between a former employee of Respondent who also served as a former board member of the Unified Carrier Registration Board (UCRB) and another former board member of the UCRB and member of the Owner-Operator Independent Drivers Association for the period January 1, 2015 to December 31, 2018.

On December 5, 2025, Respondent acknowledged the records request and communicated to Complainant that the request lacked reasonable particularity and requested clarification of what Complainant was seeking. After some back and forth communications, a refined request was received on December 10, 2025. Respondent provided two (2) responsive records to Complainant on January 8, 2026. On January 9, 2026, Complainant filed this complaint alleging that Respondent was withholding records, as he had evidence of a record which had not been included in the records provided on January 8, 2026.

In its formal response of March 12, 2026, Respondent confirmed that it had not identified any other responsive records to be delivered to Complainant and that Respondent had conducted an extensive search. Respondent outlined its own procedures for searching and then engaged the Indiana Office of Technology (IOT) to search the state computer system to capture any responsive records that may have been retained in those files.

Respondent cited the state record retention schedules applicable to the requested records which are found at the Indiana Archives and Records Administration (IARA). The General Records Retention and Disposition Schedule for all State of Indiana Administrative Agencies (General Retention Schedule) applies to the requested records. Under the General Retention Schedule most personnel emails can be destroyed by the agency after three (3) years. The record request sought records that were seven (7) to ten (10) years old.

Respondent then requested Complainant to provide the record that Complainant held a copy of and alleged that Respondent should have provided. Respondent then conducted a search for the specific record and was not able to find the record in its system.

Respondent also sought assistance from IOT to search for the records as requested. IOT responded that it could not find the specific requested record as supplied by Complainant and then provided an explanation as to why it was not accessible. IOT maintained two (2) different systems during the time period of the request. Between 2017 to 2018, the system was converted to Office 365. IOT applied eDiscovery to search the new system, which should include emails from the prior system still in the mailbox. However, if the email had been deleted in the prior system, it would not be found. IOT anticipates that the email was deleted in the prior system and confirmed it was unable to find the email in the current system.

The Public Access Counselor has on numerous occasions opined that the public agency is not required to provide records that do not exist nor is it required to create such records. *Opinion of the Public Access Counselor 25-FC-112.*

Respondent diligently searched the records it maintains and engaged IOT to look at backup files and the greater state system. No responsive records were found, with the exception of those records previously provided to Complainant. Respondent cited the position of this office that a public agency does not violate APRA by failing to provide a record that does not exist. We concur.

## **CONCLUSION**

This office finds that the Respondent did not violate APRA as alleged in the complaint.

A handwritten signature in cursive script, appearing to read "Jennifer G. Ruby".

Jennifer G. Ruby  
Public Access Counselor