



STATE OF INDIANA

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May 13, 2009

Megan Reust
BC 131
Muncie, Indiana 47306

Re: Formal Complaint 09-FC-103; Alleged Violation of the Access to Public Records Act by the Madison County Auditor

Dear Ms. Reust:

This advisory opinion is in response to your formal complaint alleging the Madison County Auditor ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Auditor's response to the complaint is enclosed for your reference. It is my opinion the Auditor's response was untimely under the APRA but the Auditor has not otherwise violated the APRA.

BACKGROUND

You allege that on April 16, 2009 you appeared at the office of the Auditor and submitted a written request for access to records. As of the date of your complaint, you allege you have not received a response to your request. Your complaint was postmarked on April 17, and my office received it on April 22.

The Auditor responded to the complaint by letter dated May 7. The Auditor contends she was out of the office at the time you delivered the request. The Auditor further indicates she was told by her employees the request was processed and the records sent to you. The Auditor contends she has addressed this problem with the employees in her office. The Auditor indicates an invoice for the copy fee was sent to you on April 28.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Auditor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Auditor during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. 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 to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency.

Here, you appeared at the office of the Auditor on April 16 and delivered the request. If the Auditor did not respond within twenty-four hours of receipt of the request, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(a).

The Auditor indicates her office has now sent you an invoice for the copy fees. The APRA allows an agency to charge copy fees in advance of providing copies of records. *See* I.C. § 5-14-3-8. I trust that once you remit the payment, the Auditor will provide you with the requested records.

CONCLUSION

For the foregoing reasons, it is my opinion the Auditor's response was untimely under the APRA but the Auditor has not otherwise violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Kathy Stoops-Wright, Madison County Auditor