



STATE OF INDIANA

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June 2, 2009

Randy Paul
101 South Glenwood Avenue West
Bloomington, Indiana 47408

Re: Formal Complaint 09-FC-116; Alleged Violation of the Access to Public Records Act by the Area 10 Agency on Aging

Dear Mr. Paul:

This advisory opinion is in response to your formal complaint alleging the Area 10 Agency on Aging ("Agency") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Agency's response to the complaint is enclosed for your reference. It is my opinion the Agency did not violate the APRA.

BACKGROUND

You allege that the Agency has denied you access to records reflecting the Agency's budget for the past two years. You allege that at a public hearing on April 27, you asked for a copy of the budget and you were told by the Agency Director that she does not have a budget. You make a number of other allegations and assertions regarding the Agency. Here, I address only the allegation within the purview of this office, whether the Agency has violated the Access to Public Records Act by denying you access to records.

The Agency responded to the complaint by letter dated May 20 from Executive Director Jewel Echelbarger. The Agency provides a copy of a letter dated May 14 and sent to you, along with copies of several of the records you requested. The Agency indicates the remaining records will be sent after May 26, as the chief financial officer is currently on vacation. Regarding the comment at the April 27 meeting, Ms. Echelbarger explains that because the state legislature has not yet passed a budget, the Agency does not have its 2010 budget yet.

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. I have contacted the Indiana State Board of Accounts and learned that the Agency is subject to audit by the Board. As such, the Agency is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m)(3)(B). Accordingly, any person has the right to inspect and copy the public records of the Agency 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 by mail and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is in person or by telephone 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(b).

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. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Agency does not indicate when it has received your requests and whether or how it has responded in the past. The Agency is required to respond to any request within the time allowed by the APRA. I.C. § 5-14-3-9. An agency may require each request to be made in writing, in or on a form prescribed by the Agency. I.C. § 5-14-3-3(a).

The Agency has now made available to you most the records you have requested. As of the date of the Agency's response, the Agency was planning to retrieve the remaining records on or after May 26. I trust that the Agency is now in the process of preparing those records for you if the Agency has not already provided them to you. Regarding your request for budget information for 2010, the Agency has indicated it does not have a budget yet because the state legislature has not yet passed the next budget. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. It is my opinion the Agency has not violated the APRA by failing to provide you copies of records which do not yet exist.

CONCLUSION

For the foregoing reasons, it is my opinion the Agency has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jewel Echelbarger, Area 10 Agency on Aging