



# STATE OF INDIANA

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April 6, 2009

Jamie Grabert  
*City-County Observer*  
208 Main Street; Suite 210-F  
Mount Vernon, Indiana 47620

*Re: Formal Complaint 09-FC-74; Alleged Violation of the Access to Public Records Act by the Evansville Housing Authority*

Dear Ms. Grabert:

This advisory opinion is in response to your formal complaint alleging the Evansville Housing Authority ("Authority") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Authority's response to the complaint is enclosed for your reference. It is my opinion the Authority took an unreasonable amount of time to provide you copies of the two records but has not otherwise violated the APRA.

## BACKGROUND

You allege that for nearly one year the *City-County Observer* has been attempting to obtain information from the Authority. You allege that most recently you have requested the employment contract for the Authority's director and a waiver regarding a Board member's receipt of Section 8 Housing Vouchers. You allege you have received no response from the Authority. You filed the present complaint on March 6, 2009.

The Authority responded to the complaint by letter dated April 2 from Executive Director Mildred Motley. The Authority contends that the *City-County Observer* submitted only two requests to the Authority in 2008 and that the Authority provided copies of all requested records. The Authority contends it has received only one request from the *Observer* in 2009. The Authority contends that the February 27 request was not denied but that the Authority was responding to the request when it received a copy of this complaint. The Authority indicates it has now provided you copies of the contract and waiver you have requested.

## 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 Authority 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 Authority 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 or facsimile 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 made in person and the agency does not respond within twenty-four hours, 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. 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, you appeared in person at the office of the Authority on February 27. You filed the complaint on March 6, alleging the Authority denied you access. So long as the Authority acknowledged your request within twenty-four business hours (or by the same time the next business day), the Authority's response was in compliance with the APRA. The APRA does not require that the records be produced within twenty-four hours, only that the agency provide a response within that time. I.C. § 5-14-3-9. Nothing in the APRA requires the response to be made in writing unless the request was made in writing *and* the agency is denying access to the requested record(s).

The Authority sent you copies of the two requested records on April 2. While the APRA does not provide a time for production of records, previous counselors and I have opined that records must be produced in a reasonable amount of time, considering the facts and circumstances. The Authority provides no explanation as to why it took nearly five weeks to produce copies of two records which constitute a total production of seven pages. The Authority indicates the contract document you requested was being signed at the time of your request (and in fact the latest signature is dated February 27), so certainly it was not necessary for the Authority to conduct a time-consuming search to locate the record. Absent an explanation from the Authority regarding the delay, it is my opinion five weeks to produce copies of two records totaling seven pages is unreasonable.

## CONCLUSION

For the foregoing reasons, it is my opinion the Authority took an unreasonable amount of time to provide you copies of the two records but has not otherwise violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Mildred Motley, Evansville Housing Authority