



# STATE OF INDIANA

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May 22, 2012

Philip Gregory Yeary  
DOC#: 169399  
1946 W. U.S. 40  
Greencastle, Indiana 46135

*Re: Informal Inquiry 12-INF-25; Timeframe to produce records*

Dear Mr. Yeary:

This is in response to your informal inquiry regarding the timeframe for the production of records under the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

## BACKGROUND

You have submitted the following inquiry regarding a public agency's response to a records request under 5-14-3-3 of the APRA:

"Regarding a written request for copies of public records, it appears that a public agency is required to respond or acknowledge a request within seven (7) days of receipt of the request. After an agency makes such acknowledgement, what kind of timeframe and what statute(s) govern and define a reasonable time for the agency to give a further response or a denial?"

## 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 I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency's records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 (7) days of receipt, the request is deemed denied. *See* I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. §5-14-3-9(a). The APRA does not require public agencies to *produce* records within seven (7) days; rather, it requires a *response*. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. The APRA would not prohibit the agency from sending a second acknowledgement or status update to the requestor, prior to the production of the records.

The APRA does not currently prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Recent legislation enacted by the Indiana General Assembly, that goes into effect on July 1, 2012, codified the guidance previously provided by the Public Access Counselor and the APRA will expressly require that a public agency produce the records within a reasonable period of time. *See* I.C. § 5-14-3-3(b). Because “reasonable period of time” is not defined, the Public Access Counselor will continue to consider such factors noted above to determine whether an agency has complied with this portion of the statute.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor