



STATE OF INDIANA

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June 3, 2015

Mr. Brent A. Snow
6159 West 100 South
Tipton, Indiana 46072

Re: Formal Complaint 15-FC-153; Alleged Violation of the Access to Public Records Act by the Tipton County Auditor; Gregg Townsend

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Auditor violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Auditor has responded via Counsel, Mr. Mark R. Regnier, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 4, 2015.

BACKGROUND

Your complaint dated May 3, 2015 alleges a violation of the Access to Public Records Act by the Tipton County Auditor. On February 9, 2015, you sent a public access request, seeking three (3) documents. They were specified as "Copy of MOU and Option to Purchase in attached Invoice from John Brooke dated Oct. 13" and "Copy of LEDO Addendum." On February 10, 2015, you received a letter that one (1) document was immediately available for inspection. On March 10, 2015, you spoke with Mr. Townsend, who informed you he was still working on your request with regards to the other documents.

On March 16, 2015, Mr. Townsend emailed you, informing you he had obtained one of the documents you requested, the Option to Purchase, and that it could be disclosed to you. Additionally, he stated he could not locate the memorandum of understanding you requested but would keep looking.

In a May 15, 2015 response to your formal complaint, Mr. Townsend contends he has fulfilled the request to the best of his ability. He notes he does not possess the memorandum of understanding.

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 Ind. Code § 5-14-3-1. The Tipton County Auditor is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Auditor’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The APRA does not require a public agency to provide records it does not possess. You have been informed the Auditor is not in possession of the memorandum of understanding. Therefore, the Auditor has fulfilled its burden under the APRA to provide that document.

The other two (2) documents you requested were either provided to you or made available to you. Therefore, the Auditor has met its burden under the APRA to provide those documents. You do not appear to have alleged the documents you were provided were deficient in any way, only that you consider the delay was unreasonable. However, the Auditor responded to your February 9, 2015 request within one (1) day and made the discovered documents immediately available to you. The Auditor continued to search for the other requested documents and offered disclosure of what he was able to locate.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Tipton County Auditor has not violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Mark R. Regnier, Esq.