



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 28, 2015

Mr. David Powers  
2433 County Road 34  
Auburn, IN 46706

*Re: Formal Complaint 15-FC-163; Alleged Violation of the Access to Public Records Act by the DeKalb County Council*

Dear Mr. Powers,

This advisory opinion is in response to your formal complaint alleging the DeKalb County Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Council has responded to your complaint via Mr. Donald Stuckey. 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 15, 2015.

## BACKGROUND

Your complaint dated May 15, 2015 alleges the DeKalb County Council has failed to comply with the Access to Public Records Act by failing to provide the records you requested.

On April 16, 2015, you requested that you be placed on a permanent email list to receive the meeting information used by council members to prepare for their meetings. You contend your request was approved, but you did not receive your package. A council meeting was held on May 4, 2015.

The Council acknowledges a delay in processing your request; however, he states this was because of a computer system crash. Your request was sent to the Council, who informed you that you would need to come to the Auditor's office and make your request in person.



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## 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 DeKalb County Council 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 Council’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).

A complaint regarding a similar situation was the subject of a previous Public Access Counselor opinion, *Opinion of the Public Access Counselor 15-FC-76*. That opinion is incorporated for reference.

Your request is a continuing or standing request for public records. You are requesting to receive meeting information from the Council. Previously, this Office has held “while it may be convenient for [the individual] to receive records based upon a standing request; it is not an obligation of a public agency to do so.” This level of service is completely at the discretion of the Council and not an entitlement.

The Council has noted that if you present your request to the Auditor, you will be provided with the records you requested. Therefore, the Council has met its burden under the APRA. Its refusal to comply with your standing request is not a violation of the APRA, because you are requesting records which will be created in the future, but do not yet exist.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the DeKalb County Council has not violated the Access to Public Records Act.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name and title.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Donald Stuckey