



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 26, 2015

Jim Brugh
204 Fourth Street
Logansport, IN 46947

Re: Formal Complaint 15-FC-246; Alleged Violation of the Access to Public Records Act by the State Board of Accounts

Dear Mr. Brugh,

This advisory opinion is in response to your formal complaint alleging the State Board of Accounts ("SBOA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* SBOA has responded to your complaint via Paul Lottes, 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 September 18, 2015.

BACKGROUND

Your complaint dated September 3, 2015 alleges that the State Board of Accounts violated the APRA by denying you access to public records.

On May 26, you submitted a written request to SBOA, seeking a copy of checks written to the City of Logansport. You are also seeking any additional documents related to these checks, including: explanations of the expenditures, noted made by field examiners related to the checks and any letters between City personnel related to the audit of those checks. Your request was denied.

On September 21, SBOA responded. Mr. Lottes contends that this information is protected under the account-client privilege and Ind. Code § 5-11-5-1(i).

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 State Board of Accounts is a public agency for the purposes of the



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APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the SBOA'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 accountant-client privilege was recently addressed in Opinion of the Public Access Counselor 15-FC-93. Under the accountant-client privilege, an accountant is not required to divulge information relative to and in connection with any professional service. This is further buttressed by the recent promulgation of P.L. 181-2015 amending Ind. Code § 5-11-5-1(i) which explicitly states that SBOA employees may not divulge audit material. Therefore, denial under the account-client privilege is valid and I see no reason to revisit or amend the analysis in 15-FC-93.

That said, your point is well taken that taxpayers have a right to know where their money goes and how it is being used and whether the local unit is being a good steward of those funds. To the extent there is information that does not compromise any recognized accountant-client privilege, it should be released. To wit, the SBOA publishes a final report of its findings and those conclusions are public record subject to scrutiny. See www.in.gov/sboa.

To that end, I do not believe that your request was so vague or ambiguous to lack reasonable particularity. I have often stated that a requester does not have to identify a document with pinpoint accuracy but rather give a reasonably detailed description of a document or set of documents you seek. The request, however, should have been served upon the City of Logansport who is in the best position to search for, retrieve and produce those documents. Because it is settled that the material gathered by SBOA as the auditor is subject to privilege, the public records (budgets, expenditures, line-items, appropriations, etc.) subject to audit would be available from the City as the auditee. SBOA is correct that they may not have the sufficient information to identify the documents you actually seek. The City, however, should be in a position to do so.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the State Board of Accounts 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.

Luke H. Britt
Public Access Counselor

Cc: Paul Lottes, Esq.