



# 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)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

March 9, 2015

Mr. Randy Smith  
2229 E. Elm St.  
New Albany, IN 47150

*Re: Formal Complaint 15-FC-29; Alleged Violation of the Access to Public Records Act by the New Albany Municipal Utilities*

Dear Mr. Smith,

This advisory opinion is in response to your formal complaint alleging the New Albany Municipal Utilities (“NAMU”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The NAMU has responded to your complaint via Ms. April Dickey, Billing Director. 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 January 30, 2015.

## **BACKGROUND**

Your complaint dated January 29, 2015 alleges the New Albany Municipal Utilities violated the Access to Public Records Act by failing to provide the requested documentation within a reasonable amount of time.

On January 8, 2015, you submitted a public records request to the NAMU for the following records:

[a]ll sanitary sewer billings associated with Pillsbury’s operations in New Albany covering the period of the last 24 billings.

Please include the metrics used to calculate the billing, the amount of each bill, and the rate charged to Pillsbury. If the sewer utility rate is billed under any special or industrial rate, negotiated, administrative or legislated, please provide the details of those calculations.

The NAMU acknowledged your request and indicated it would take two (2) weeks to produce the documents. On January 29, 2015, the documents were provided to you. You take exception with their delay.

### **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 New Albany Municipal Utilities 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 NAMU’s 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).

Pursuant to Ind. Code § 5-14-3-3, a public agency must produce documentation to a request within a reasonable time. Reasonable time is not defined by Indiana Statute and is a subjective determination. This determination depends on the size of the agency, agency staff, size of the request, etc. NAMU did not address directly why it took nearly three (3) weeks to produce the small amount of documentation. I have reviewed the documentation provided and it does not appear to be significantly complex or historical.

You indicate a public hearing took place sometime after your request and suggest the records may not have been released timely in order to frustrate your intention to voice your opinion at the hearing. While I do not have sufficient information to support that suspicion, it does appear three (3) weeks is a long time to produce two (2) documents.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the New Albany Municipal Utilities violated the Access to Public Records Act by not producing records within a reasonable time after your request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: April Dickey