



# 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)

November 13, 2015

Mr. Walter B. Plageman  
23444 Blue Ridge Drive  
Lawrenceburg, Indiana 47025

*Re: Formal Complaint 15-FC-300; Alleged Violation of the Access to Public Records Act by the Dearborn County Health Department (Priority)*

Dear Mr. Plageman,

This advisory opinion is in response to your formal complaint alleging the Dearborn County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Ms. Mary Calhoun, Health Department Lead. Her 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 November 2, 2015. This complaint has been granted priority status.

## BACKGROUND

Your complaint dated November 2, 2015 alleges the Dearborn County Health Department violated the Access to Public Records Act by to provide the records you requested.

The Department filed a complaint against you, declaring your house unfit for occupation due to septic issues. You believe a number of households which also have similar issues and would be required to tap into the sewer line. However, you allege the Department refused to provide you with records showing which houses are similarly situated.

On November 9, 2015 the Department responded. Ms. Calhoun stated while you did make a telephonic records request, you failed to make a request in writing.



# 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)

## 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 Dearborn County Health Department 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 Department’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 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 in person and the agency does not respond within 24 hours, the request is deemed denied. See I.C. § 5-14-3-9(a). 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 (emphasis added). See I.C. § 5-14-3-9(b). 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.

If there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed. See Ind. Code § 5-14-3-3(a)(2) and *Opinion of the Public Access Counselor 14-FC-51*. The implication from Ms. Calhoun’s response is that there is a Department policy to only accept written requests on a prescribed form. If there is such a policy, then the Department’s refusal to provide documents is proper, albeit with the caveat they must acknowledge your oral request within 24 hours. In that case, the Department would still be required to inform you telephonic requests were not acceptable. It is uncertain from the record provided if that occurred.

Without further information, I cannot make a determination as to whether the Department violated the Access to Public Records Act. It is my suggestion you resubmit your request in writing to the Department or pursue the materials in discover through the civil litigation in which you are involved. The Department is now on notice you will be making such a request and should be able to provide you with the records you seek. It is my sincere hope you obtain those records.

Regards,



# 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)

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: Ms. Mary E. Calhoun