



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

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)

December 13, 2010

Ms. Nancy Garbrecht  
6170 Joliet Rd., Suite 200  
Countryside, IL 60525

*Re: Formal Complaint 10-FC-283; Alleged Violation of the Access to Public Records Act by the Kankakee-Iroquois Regional Planning Commission*

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging the Kankakee-Iroquois Regional Planning Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

## BACKGROUND

In your complaint, you allege that on September 1, 2010, you sent an email to Kimberly Baker of the Commission requesting copies of certified payrolls for fire station projects in Brook and Remington, Indiana. You did not receive a response to that request. On November 4th, you sent another email requesting the same information, but as of November 11th you had not received a response to that request either.

My office forwarded a copy of your complaint to the Commission. Ms. Baker responded on its behalf. Ms. Baker enclosed the records you requested with her response, and explained that she has complied with all of your previous requests and was not aware that you wanted the records by a certain date. She states that the workload of her office has tripled, but she always planned to provide the records you requested. She also questions she was not contacted informally prior to the filing of your formal complaint.

## 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.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The Commission does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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.

Ms. Garbrecht made her initial records request on September 1, 2010. Although Ms. Baker maintains that she always intended to provide the responsive records, it appears that the Commission did not respond to that request. I also have no information before me indicating that the Commission responded to Ms. Garbrecht’s second request dated November 4th. Thus, under subsection 9(b) of the APRA, Ms. Garbrecht’s request is deemed denied. If the Commission intended to grant Ms. Garbrecht’s request, it simply needed to respond within the APRA’s timelines. I trust that the Commission’s response satisfies Ms. Garbrecht’s request and resolves this issue.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Commission should have responded to the September 1st and November 4th requests within seven days. If the Commission has now produced all responsive records, it has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Kimberly Baker