



# STATE OF INDIANA

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July 15, 2013

Mr. Paul M. Allen  
315 Cobblestones Court  
Avon, Indiana 46123

*Re: Informal Inquiry 13-INF-36; West Central Conservancy District*

Dear Mr. Allen:

This informal opinion is in response to your inquiry regarding the West Central Conservancy District ("District") and the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. Alan M. Hux, Attorney, responded on behalf of the District to your inquiry. His response is enclosed for your reference.

## BACKGROUND

You provide that on March 21, 2013, you wrote a letter to William Palmer with the Arch Insurance Group. Arch Insurance provides coverage to the District. You requested that Arch Insurance perform a financial audit on the District to exonerate you from the allegations that occurred while you were serving as the District's Board Chairman. You also requested that the District conduct an investigation into the allegations. In response, Arch Insurance informed you that they were unable to conduct an audit, without any further explanation. You find the response to be unacceptable. You maintain that the District has yet to respond to your request for an audit. You maintain that Arch Insurance and the District has a duty to give an explanation as to why they will not fulfill your request.

On April 29, 2013, you submitted a request to all members serving on the District's Board ("Board") that an audit be conducted regarding the conduct of the District's employees. To date, you have yet to receive any response.

On June 3, 2013, you submitted a request to the District for copies of the revised paid-time-off ("PTO") policy in addition to all earned and used PTO of the District's Manager from January 1, 2013 through May 31, 2013. The District's attorney responded to your request, to which you take issue that all members of the Board were not copied. You inquire whether the District's denial pursuant to I.C. § 5-14-3-4(b)(8) was proper.

You further inquire if the District does have discretion to release said records and the Board has not approved the denial, is the denial proper.

In response to your inquiry, Mr. Hux advised that the two initial issues presented in your inquiry are outside the purview of the Public Access Counselor's Office and do not involve a request for records made pursuant to the APRA. As to your third inquiry, the District denied your request for records related to the District Manager's PTO from January 1, 2013 through May 31, 2013 pursuant to I.C. § 5-14-3-4(b)(8). The District's response to your request was sent to all members of the Board. The Board was fully aware of your request and Mr. Hux's response on behalf of the District. Further, you have already been provided with copies of the current and existing PTO Policy.

### 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* I.C. § 5-14-3-1. The District is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the District's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

I would agree with the District in that the inquiries that you submitted regarding your request of Arch Insurance and the District to conduct an audit of the agency and/or its employees do not involve the APRA. While a public agency would be required to respond to a request made for records pursuant to the APRA, you are not requesting that the District provide you with a copy of a record. Rather, you are asking it to take action in response to your request that an audit be performed. As such, your initial two inquiries are outside the purview of this office.

As to your request for a copy of the District's PTO Policy, Mr. Hux has advised that you have already been provided with a copy. As to your request for a copy of the District Manager's PTO from January 1, 2013 through May 31, 2013, the District denied your request pursuant to I.C. § 5-14-3-4(b)(8). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). The APRA provides that that certain personnel records may be withheld from disclosure:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. As the PTO records are maintained in each employee's personnel file and such records are not required to be disclosed by the agency pursuant to (A) - (C), it is my opinion that the District complied with the requirements of section 9(c) of the APRA in denying your request. As to your inquiry regarding the appropriateness of Mr. Hux's denial of your request without the Board's approval, Mr. Hux has stated that the Board was aware of all correspondence related to your various requests and the denial of your request made pursuant to the APRA.

Please let me know if I can be of any further assistance.

Best regards,



Joseph B. Hoage  
Public Access Counselor

cc: Alan M. Hux