



# STATE OF INDIANA

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August 8, 2012

Paul Straughn  
P.O. Box 26  
Eola, Illinois 60519

*Re: Formal Complaint 12-FC-180; Alleged Violation of the Access to Public Records Act by the Office of the Attorney General*

Dear Mr. Straughn:

This advisory opinion is in response to your formal complaint alleging the Office of the Attorney General ("Attorney General") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Matt Light, Chief Counsel of Advisory and ADR Services Division, responded on behalf of the Attorney General.

## BACKGROUND

In your formal complaint, you allege that on May 3, 2012, you submitted a written request for records to the Attorney General, to which after initially acknowledging the receipt of the request, the Attorney General responded on June 8, 2012. As applicable to your formal complaint, your original request for records and the Attorney General's is as follows:

### Request 1:

The Consumer Complaint Form used and created by the Indiana Attorney General's Office and posted at [http://www.in.gov/attorneygeneral/files/Printable\\_Complaint\\_Form.pdf](http://www.in.gov/attorneygeneral/files/Printable_Complaint_Form.pdf) clearly states in Item # 17 "What will happen now? What else should you do? And posts the corresponding response "The Consumer Protection Division will send a copy of your complaint to the respondent firm or licensed professional." Therefore, I request you provide copies of:

- a. Documents which provide the Indiana Attorney General's office caused a copy of 11-FC-64749 to be sent, mailed, and/or delivered to the respondent, Dr. DAT. These include, but are not limited to, proof of postage, postal meter records, receipts, any U.S. Postal Service forms such as Delivery Confirmation, Return Receipt, Certified Mail, and Registered Mail, and any and all other forms created by any delivery service that the



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Indiana Attorney General used to deliver a copy of 11-CP-64749 to the respondent.

- b. In the event no such documentary evidence exists, please provide a sworn affidavit from Case Analyst MW, or any other Indiana Attorney General employee who was responsible for, and can truthfully testify, that (s)he caused, or failed to cause, a copy of 11-CP-64749 to be sent, mailed, and/or delivered to the respondent.
- c. Documents that provide the Indiana Attorney General's office caused a copy of 11-CP-64750 to be sent, mailed, and/or delivered to respondent, Dr. AFW. These include, but are not limited to, proof of postage, postal meter records, receipts, copies of any U.S. Postal Service forms such as Delivery Confirmation, Return Receipt, Certified Mail, and Registered Mail; and any and all other forms created by any delivery service that the Indiana Attorney General used to deliver a copy of 11-CP-64750.
- d. In the event no such documentary evidence exists, provide a sworn affidavit from Case Analyst MW, or any other Indiana Attorney General employee who was responsible for, and can truthfully testify, that (s)he caused or failed to cause, a copy of 11-CP-64750 to be sent, mailed, and/or delivered to the respondent.
- e. Without revealing its contents, provide the date the Indiana Attorney General's office received a rebuttal response from 11-CP-64749 respondent Dr. DAT.
- f. Without revealing its contents, provide the date the Indiana Attorney General's office received a rebuttal response from 11-CP-64750 respondent Dr. AFW.

## Attorney General's Response:

- (a) Under I.C. 25-1-7-10, all consumer complaints against professional and medical licensees are confidential unless the Attorney General files an administrative complaint against the licensee with the respective licensing board. The Attorney General did not file an administrative complaint against Dr. DAT in relation to consumer complaint 11-CP-64749, so therefore the consumer complaint file remains confidential, and access to the correspondence to the respondent must be denied in accordance with I.C. 25-1-7-10.
- (b) The APRA does not require public agencies to create records in response to a public records request. *See Opinion of the Public Access Counselor 12-FC-17.* You requested a sworn affidavit from Case Analyst MW or any other appropriate



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- Attorney General employee relating to delivery of the consumer complaint to the respondent. No such record exists within the records of the Attorney General.
- (c) Under I.C. 25-1-7-10, all consumer complaints against professional and medical licensees are confidential unless the Attorney General files an administrative complaint against the licensee with the respective licensing board. The Attorney General did not file an administrative complaint against Dr. AFW in relation to consumer complaint 11-CP-64750, so therefore the consumer complaint file remains confidential, and access to correspondence to the respondent must be denied in accordance with I.C. 25-1-7-10.
  - (d) The Access to Public Records Act does not require public agencies to create new records in response to public records requests. *See Opinion of the Public Access Counselor 12-FC-17.* You requested a sworn affidavit from Case Analyst MW or any other appropriate Attorney General employee relating to delivery of the consumer complaint to the respondent. No such record exists within the records of this agency.
  - (e) See Attorney General's response to Request 1(a).
  - (f) See Attorney General's response to Request 1(c).

## Request 2

The 11-CP-64749 closing letter issued by the Indiana Attorney General clearly states "We received all available evidence . . .":

- a. Provide copies of all documents which constitute the "all available evidence . . ." referred to in your 11-CP-64749 closing letter, other than evidence provided by the Complainant, and which was found, located, generated, uncovered, and/or developed solely as the result(s) of any effort(s) whatsoever by the Indiana Attorney General employee(s).
- b. Provide copies of the same documents which pertain to 11-CP-64750.

## **Attorney General's Response:**

- (a) See Attorney General's response to Request 1(a)
- (b) See Attorney General's response to Request 1(c).

## Request 8

MW is employed by the Indiana Attorney General as a "Case Analyst", assigned in that capacity to 11-CP-64749 and 11-CP-64750:



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- a. Provide MW's complete name and salary.
- b. Provide the sum number of years MW has been employed by the Indiana Attorney General in any capacity.
- c. Provide the sum number of years MW has been employed by the Indiana Attorney General as a "Case Analyst."
- d. State if MW has ever been employed with the official title of "Investigator" by the Indiana Attorney General's office.
- e. Provide documentation which reveals any and all training MW has completed, from any agency or organization, in furtherance of establishing, creating, and/or honing investigative skills.
- f. Provide a copy of the formal job description issued and used by the Indiana Attorney General for the position of Case Analyst.

## Attorney General's Response:

The Access to Public Records Act does not require public agencies to answer questions or interrogatories or to provide information. Rather, the Act requires agencies to permit inspection or copying of disclosable public records. *See Opinion of the Public Access Counselor 01-FC-60.* However, in response to the question in 8(a) – (e), we can provide copies of records that contain some of the information that you requested. MW's personnel file, redacted to remove any portions of the file that may remain confidential under I.C. § 5-14-3-4(b)(8), is being provided in response to this request and Request 7.

A copy of MW's formal job description as Case Analyst is being provided in response to Request 8(f).

## Request 19

In regards to Deputy Indiana Attorney General GO:

- a. Provide annual salary
- b. Specifically describe any work experience investigating and prosecuting violations of administrative law and violations of criminal law.

## Attorney General's Response

The Access to Public Records Act does not require public agencies to answer questions or interrogatories or to provide information. Rather, the Act requires agencies to permit inspection or copying of disclosable public records. *See Opinion of the Public Access*



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*Counselor 01-FC-60.* However, some of the information you are requesting is included in our office's personnel files.

I.C. § 5-14-3-4(b)(8) provides that certain information in state agency employee personnel files is disclosable at the discretion of the public agency. Specifically, under this statute, the agency may exercise its discretion not to disclose "(p)ersonnel 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.

The components of GO's personnel file that must be disclosed as identified in I.C. § 5-14-3-4(b)(8) are being provided in response to this request. Other portions of the file will not be disclosed as it is the office policy of this office not to disclose any other information from personnel files. Additionally, GO's salary was provided.

## Request 20

In regards to Indiana Deputy Attorney General PB:

- a. Provide annual salary
- b. Specifically describe any experience investigating and prosecuting violations of administrative law and violations of criminal law.

See Attorney General's Response to Request 19

## Request 21

In regards to Indiana Deputy Attorney General AK:

- a. Provide annual salary.
- b. Specifically describe any experience investigating and prosecuting violations of administrative law and violations of criminal law.

## **Attorney General's Response**



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See Attorney General's Response to 19.

You allege that the Attorney General violated the APRA in response to the following individual requests:

Request 1(a), (c), (e), (f):

I.C. 25-1-7-5(3) clearly states that "The [consumer protection division] director shall report any pertinent information regarding the status of the complaint to the complainant."

Anytime the Attorney General sends a copy of a complaint to a respondent licensee, the Attorney General effectively changes the complaint's status from received to active. Therefore, under I.C. 25-1-7-5(3), the Attorney General Consumer Protection Division Director ("Director") is required to send documents, as requested, that provide the Attorney General caused a copy of 11-CP-64749 to be sent, mailed, and/or delivered by any means to the respondent, Dr. DAT.

The Attorney General's website promises to complainants that the Attorney General "will contact you by mail as your complaint progresses through the process. Please allow adequate time for our office to notify you." Clearly, information about how a complaint "progresses through the process" is pertinent information about its status. Also, because the act of mailing a copy of 11-CP-64749 to the respondent, Dr. DAT, is part of the complaint's proper progress, the director has a statutory obligation under I.C. 25-1-7-5(3) to provide proof, as requested, that the copy was sent to Dr. DAT or Dr. AFW. The statute also places the burden on the Director to report a complaint's status change to the requestor. However, due to the Director's failure to provide this notification, the complainant has initiated inquiry via a lawful valid request for the same.

Request 2

The Requestor is also the Complainant in both 11-CP-64749 and 11-CP-64750. The requestor contends that the only evidence examined by the Attorney General, if any, is that which the requestor provided. Therefore, the disclosure of the same would not violate confidentiality because of its origin. The requestor contends that the Attorney General failed to give proper consideration and investigation to both complaints that were filed. The Attorney General ignored and intentionally refused to examine specific evidence, yet now allege to have reviewed all available evidence. The Request seeks records that will confirm this. If evidence exists to affirm or disprove the allegations, the



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Attorney General should not object to providing properly redacted documents which can confirm the veracity of the statements that have been given.

As to Request 2(b), I.C. § 25-1-7-5(b)(3), the Director has a legal obligation to “report any pertinent information regarding the status of the complaint to the complainant.” The Director has never contacted the requestor/complainant to provide any status as to 11-CP-64750.

## Request 8

In response to the request, the Attorney General provided a copy of the “Indiana Attorney General’s Office Application for Employment” submitted by MW. The Attorney General redacted the following question from the application:

“Have you ever been involuntarily discharged or forced to resign from any employer? If yes, give the name of employer, and other details on separate page.”

The Attorney General redacted MW’s answer and the “separate page.” The Attorney General incorrectly redacted this information as it does not have legal discretion to deny such information under I.C. § 5-14-3-4(b)(8)(C). Further, the Attorney General provided a copy of MW’s resume displaying the handwritten word “updated” in the upper right hand corner. The Attorney General should be required to provide a copy of the resume which preceded the version marked updated.

## Request 19(b), 20(b), and 21(b)

The Attorney General failed to provide any documents which specifically describe GO’s experience in investigating and prosecuting violations of administrative and violations of criminal law. The incomplete job application fails to reveal any such experience. If no such documents exist, the requestor asks that the Attorney General be directed to so state.

Further, the APRA is superior to the Attorney General’s Office Policy and the Requestor is entitled to GO’s education and training background. The Attorney General has placed the requestor at an unfair disadvantage by the use of vague and undefined terms and leaves open the possibility that the Attorney General is unilaterally deciding to deny records that are responsive to the request.

In response to your formal complaint, Mr. Light advised as to your Request 1(a), (c), (e), and (f), the Attorney General contends that the obligation under I.C. § 25-1-7-



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5(3) to provide pertinent information to the complainant does not trump or eliminate the confidential provisions contained in I.C. § 25-1-7-10. The Attorney General has carried out the complaint processing directives in a way that it believes is appropriate and ultimately communicated to you that the consumer complaint file was closed. The Consumer Protection Division has delegated file status communication and closure communication responsibilities in most instances to Division Staff. Since no administrative complaint was filed, I.C. § 25-1-7-10 provides that consumer complaints and all information to the consumer complaint be held in strict confidence.

As to Request 2, the Consumer Protection Division has determined that none of the exception provided in I.C. § 25-1-7-10 were present with respect to the matters in question. Your request asked for records “other than evidence presented by the Complainant.” Said records are confidential under I.C. § 25-1-7-10.

As to Request 8, the items found under I.C. § 5-14-3-4(b)(8)(A)-(C) must be disclosed. Any additional items may be disclosed at the discretion of the agency. The information redacted from MW’s resume did not relate to subdivisions (A)-(C) and the Attorney General’s policy is to not disclose information that does not relate to said subdivisions. MW has not been formally charged, disciplined, suspended, demoted, or discharged while employed with the Attorney General. Any involuntary discharge or forced resignation by or from a previous employer is not within the scope of the required disclosures under subdivisions (A)-(C). The Attorney General is checking MW’s employment file to determine whether previous versions of the resume are in the agency’s possession. If any previous versions are found, said copies will be forwarded in a supplemental response.

As to Requests 19(b), 20(b), and 21(b), the Attorney General does not have the 4<sup>th</sup> page of the job application for GO. The job application does include information regarding prior experience working for the Pennsylvania Office of Inspector General, Department of Transportation, Governor’s Office, and Lt. Governor’s Office. The information in that record is the documentation that the Attorney General has in its possession that is responsive to your request for personnel records relating to experience investigating and prosecuting violations of administrative law and violations of criminal law. In regards to GO’s resume, the Attorney General does not have in its possession and the agency is not required to create a new record in response to a records requests. *See Opinion of the Public Access Counselor 12-FC-17.* The required items listed under I.C. § 5-14-3-4(b)(8) have been disclosed to you in response to your request. A copy of PB’s resume and job application has been provided in response to the request. PB’s and AK’s resume and job application are the only applicable record that are maintained by the



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Attorney General that are responsive to your request for their legal experience and training.

In reply to the Attorney General's response, you allege that the Attorney General's assertion is unsupported by the plain language of I.C. § 5-4-3-4(b)(8)(C). The statute's disclosure requirement is neither limited nor restricted to those persons who were fired only from their public agency positions. There is no exemption of any kind based on whether the termination was a private or public sector job. MW's involuntary discharge from any employer is a matter of grave concern as she is a public employee holding a position of trust. Information regarding a previous termination may reveal a lack of qualifications to properly perform a position's duties and responsibilities.

In regards to Request 19(b), the Attorney General failed to provide a complete copy of GO's job application. Knowing that the record is missing and that the job application is incomplete, the Attorney General should be required to execute the complete record and provide a copy in response. As to 20(b) and 21(b), the Attorney General has failed to provide any records that show PB and AK have experience investigating and prosecuting violations of administrative law and violations of criminal law. If the Attorney General has no such records, it should so state.

## 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 Attorney General 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 Attorney General'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).

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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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



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of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Counselor O'Connor provided the following analysis regarding section 9:

Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either “establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit” *to the court*. Similarly, if the public agency claims an exemption under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. *Opinion of the Public Access Counselor 01-FC-47*.

When a record contains both disclosable and nondisclosable information and an agency receives a request for access, the agency shall “separate the material that may be disclosed and make it available for inspection and copying.” *See* I.C. § 5-14-3-6(a). The burden of proof for nondisclosure is placed on the agency and not the person making the request. *See* I.C. § 5-14-3-1. The Indiana Court of Appeals provided the following guidance on a similar issue in *Unincorporated Operating Div. of Indianapolis Newspapers v. Trustees of Indiana Univ.*, 787 N.E.2d 893 (Ind. Ct. App. 2005):



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However, *section 6 of APRA* requires a public agency to separate disclosable from non-disclosable *information* contained in public records. *I.C. § 5-14-3-6(a)*. By stating that agencies are required to separate "information" contained in public records, the legislature has signaled an intention to allow public access to whatever portions of a public record are not protected from disclosure by an applicable exception. To permit an agency to establish that a given document, or even a portion thereof, is non-disclosable simply by proving that some of the documents in a group of similarly requested items are non-disclosable would frustrate this purpose and be contrary to section 6. To the extent that the *Journal Gazette* case suggests otherwise, we respectfully decline to follow it.

Instead, we agree with the reasoning of the United States Supreme Court in *Mink, supra*, i.e., that those factual matters which are not inextricably linked with other non-disclosable materials, should not be protected from public disclosure. See *410 U.S. at 92*. Consistent with the mandate of *APRA section 6*, any factual information which can be thus separated from the non-disclosable matters must be made available for public access. *Id. at 913-14*.

A public agency may not disclose records declared confidential by state statute in response to an APRA request. See *I.C. § 5-14-3-4(a)(1)*. *I.C. § 25-1-7-10* provides:

Sec 10. (a) Except as provided in section 3(b) of this chapter, all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

- (c) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:
- (1) under the law; or
  - (2) for the advancement of an investigation.



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There is no dispute that the Attorney General did not file an administrative complaint after receiving consumer complaint 11-CP-64749 and 11-CP-64750 or has it been alleged that I.C. § 25-1-7-3(b) is applicable. As directed by I.C. § 25-1-7-10, "all complaints and information pertaining to the complaints shall be kept in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee." The Attorney General was thus prohibited by I.C. § 25-1-7-10 from disclosing the complaint and any information pertaining to the complaint to you in response to your request. *See Opinions of the Public Access Counselor 03-FC-30 and 03-FC-36.* The statute does not provide that the Director's obligations under I.C. § 25-1-7-5(3) eliminate the confidentiality provisions contained in I.C. § 25-1-7-10. To the extent that you allege that Director has failed to comply with the requirements of I.C. § 25-1-7-5, such issue would be outside the purview of this office. I.C. § 25-1-7-10 is uniformly applicable, in that the statute does not contain an exception to confidentiality to the actual complainant. As to your request for records maintained by the Attorney General regarding 11-CP-64749 and 11-CP-64750, it is my opinion that the Attorney General did not violate the APRA.

The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA's disclosure requirements, 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. 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. The Attorney General has provided that all information as required under the statute has been produced. MW has not been formally charged, disciplined, suspended, or demoted while employed with the Attorney General. The Attorney General argues that any involuntary discharge or forced



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resignation by or from a previous employer is not included within the scope of which is required to be disclosed under the statute. You challenge this assertion in that the disclosure requirement of I.C. § 5-14-3-4(b)(8)(C) is not limited to public agency positions.

There is no argument that the application was maintained in the employee's personnel file with the Attorney General. I would agree with Mr. Straughn's contention that the language of I.C. 5-14-3-4(b)(8)(C) does not limit the required disclosure to an employee's current position with the public agency. If the General Assembly had intended to limit the required disclosure under (b)(8)(C), it would have indicated as such. The Attorney General has not cited to, nor was I able to find, any case law or previous opinion of the Public Access Counselor in support of a contrary interpretation. The General Assembly has provided that the APRA is to be liberally construed; "Liberal construction of a statute requires narrow construction of its exceptions. *Robinson v. Indiana University*, 659 N.E. 153, 156 (Ind. App. 1995) quoting *Common Council of City of Peru v. Peru Daily Tribune Inc.*, 440 N.E. 2d 726, 729 (Ind. App. 1982); *See also* I.C. § 5-14-3-1. As such, it is my opinion that the Attorney General has not met its burden to demonstrate that the redaction of information from MW's employee application and supplementary record was proper under I.C. § 5-14-3-4(b)(8)(C).

I would note that I have not reviewed an un-redacted copy of the records involved, nor does the statute provide such authority to the Public Access Counselor. Subsection (b)(8)(C) specifically requires for a disciplinary action to have occurred. If, for example, an employee had been let go from previous employment due to a downturn in the economy, the requirements of (b)(8)(C) would not apply, as no disciplinary action would have taken place. If a suspension, demotion, or discharge did not occur, again the requirements of the subsection would not apply. Lastly, it is my opinion that an agency would not be required to create a factual basis under (b)(8)(C) if no such record was maintained by the agency upon receipt of the request. *See Opinion of the Public Access Counselor 08-FC0184 and 12-FC-110.*

As to your request under 19(b), the Attorney General has provided that all records that are currently maintained by the agency that are responsive to your request have been provided. The information provides documents the employee's work experience with the Pennsylvania Office of Inspector General, the Department of Transportation, Governor's Office, and Lt. Governor's Office. Nothing in the APRA requires a public agency to develop records or information in response to a request. *See Opinion of the Public Access Counselor 09-FC-75.* The Attorney General has provided that it is unable to locate page four of GO's employment application. The APRA requires public agencies



# STATE OF INDIANA

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to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further take precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b). If the Department failed preserve its records (specifically page 4 of the employment application) in accordance with the applicable retention schedule and/or failed to protect its records from loss, alteration, or destruction, it is my opinion that it violated I.C. §§ 5-14-3-4(e) and 5-14-3-7.

As to your request founds under 20(b) and 21(b), as provided *supra*, nothing in the APRA requires a public agency to develop records or information pursuant to a request. *See Opinion of the Public Access Counselor 09-FC-75*. The APRA requires the public agency to provide access to records already created. *Id*; *See Opinion of the Public Access Counselor 12-FC-110*. The Attorney General has provided that all records that it maintains that are responsive to your request that describe the employees experience in investigating and prosecuting violations of administrative law and violations of criminal law have been provided. As such it is my opinion that the Attorney General did not violate the APRA in response to your request 20(b) and 21(b). You allege that if the Attorney General does not maintain records responsive to your request, it should so state. In response, it is my opinion that the Attorney General has satisfied your request when it stated in the response to your formal complaint that the “resume and job application are the only applicable records we have in our possession that reflect legal experience and training per the initial request.”



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## CONCLUSION

For the foregoing reasons, it is my opinion that if the Attorney General failed to preserve its records (i.e. page 4 of GO's employment application) in accordance with the applicable retention schedule, then it violated the APRA. Further, it is my opinion the Attorney General has failed to meet its burden to demonstrate that the redaction of information from MW's employment application and supplementary record was proper pursuant to I.C. § 5-14-3-4(b)(8)(C). As to all other issues, it is my opinion that the Attorney General complied with the requirements of the APRA in responding to your request for records.

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Matt Light