

February 12, 2008

Maryellen Baker
401 West Bristol Street
Elkhart, Indiana 46514

Re: Formal Complaint 08-FC-39; Alleged Violation of the Access to Public Records Act by the Indiana Attorney General

Dear Ms. Baker:

This advisory opinion is in response to your formal complaint alleging the Indiana Attorney General (“Attorney General”) violated the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3) by denying you access to records. A copy of the Attorney General’s response to your complaint is enclosed for your reference. It is my opinion the Attorney General did not violate the APRA.

BACKGROUND

In your complaint you allege you submitted a request to the Attorney General dated October 16, 2007 for copies of records related to “the criteria and formula used by the State of Indiana for distributing its share of the Ameriquest Multistate Settlement fund to its residents for mortgage loans or home equity loans obtained directly from Ameriquest between January 1, 1999 and December 31, 2005.” You received a response from Jean Marie Leisher of the Attorney General’s office dated October 29. Ms. Leisher indicated the office was searching for the records and would produce them in upon completion of a review of the records. You allege you telephoned the Attorney General twice after receiving the letter but had received no response. You made the second call on January 8, 2008. You mailed this complaint on January 9, and I received it on January 14.

You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

Upon receipt of your complaint, I sent a copy to the Attorney General for response. Ms. Leisher indicated that Tom Bodin of the Attorney General’s office had provided you the requested information on January 8. Ms. Leisher asked us to contact you to request this

complaint be withdrawn since you received the requested records. My office contacted you on January 15 but received no response from you.

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

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

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c).

The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. Past public access counselors have addressed this issue on several occasions. I recently addressed the issue in *Opinion of the Public Access Counselor 07-FC-249*, finding five weeks was not an unreasonable period of time for the Marion County Election Board to produce records pursuant to a request.

Here, the Attorney General received your request on or after October 17 and sent you a response dated October 29. If the October 29 response was sent within the seven days allowed by the APRA for response, the Attorney General did not violate the APRA in its response. I.C. §5-14-3-9(b). While the Attorney General did not technically violate the APRA by not returning your subsequent telephone calls, I will note here that I urge agencies to regularly communicate with requesters regarding the status of a request which takes a good deal of time to address. Your complaint centers around the denial of access. Since you have now received the records, I cannot find that the Attorney General denied you access to records.

If your complaint were related to the amount of time the Attorney General took to produce records responsive to your request, I would need more information related to the nature of the request and the circumstances surrounding the production to provide an opinion related to

time for production. It has long been the opinion of the public access counselor that records must be produced in a reasonable period of time, considering the facts and circumstances. Here the Attorney General needed to gather any responsive records and then review those records to determine whether any mandatory or discretionary exceptions to disclosure under I.C. I.C. §5-14-3-4 applied to those records. This is in addition to the regular duties of the Attorney General. I do not have any evidence to indicate whether the time period between the Attorney General's receipt of your request and the date the Attorney General provided the records is an unreasonable period of time for review and production, and I do not understand the time for production to be the reason for your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion the Indiana Attorney General did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Jean Marie Leisher, Office of the Attorney General