



# STATE OF INDIANA

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Ms. Lisa A. Moser  
304 W. U.S. Highway 6  
Valparaiso, IN 46385  
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*Re: Formal Complaint 10-FC-125; Alleged Violation of the Access to Public Records Act by the Gary/Chicago International Airport Authority*

Dear Ms. Moser:

This advisory opinion is in response to your formal complaint alleging the Gary/Chicago International Airport Authority (the "Airport") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Authority's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested a copy of certain records from Nathaniel Williams, president of the Airport's board. You sent an initial request to Mr. Williams on March 24, 2010, and a second request on April 26, 2010. As of the date of your complaint, May 11, 2010, you had not received a response from the Authority. Your request sought access to a preliminary report on the airport prepared by SEH, a consulting firm.

In response to your complaint, the Airport states that SEH provided a preliminary report for the Airport's review and comment. The Airport provided a detailed response to SEH. Subsequently, the Northwest Indiana Regional Development Authority ("RDA") publicly released SEH's revised report along with the comments provided by the Airport. The Airport maintains that the only record pertaining to the SEH report is the final report; the Airport does not have any earlier version of the report. Moreover, the Airport argues that even if it did possess such record, it would be exempt from disclosure under the deliberative materials exception to the APRA.

## ANALYSIS

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. Here, if the Airport failed to respond to your written request within seven (7) days, the Airport violated the APRA.

If the Airport does not maintain the preliminary report that you seek, it has not violated the APRA by failing to provide you with a copy. The public access counselor has repeatedly said that if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Airport failed to respond to your written request within seven (7) days, the Airport violated Section 9 of the APRA. However, it is my opinion the Airport did not otherwise violate the APRA if it has no records responsive to your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Patrick Lyp