



# STATE OF INDIANA

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November 23, 2010

Mr. Thomas M. Meredith  
P.O. Box 97  
Monrovia, IN 46157

*Re: Formal Complaint 10-FC-260; Alleged Violation of the Access to Public Records Act by the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology*

Dear Mr. Meredith:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Natural Resources ("DNR"), Division of Historic Preservation and Archaeology ("DHPA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The DNR's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that the DNR violated the APRA by denying your request for access to the names of firms that submitted competing proposals to the Indiana Courthouse Preservation Advisory Commission ("Commission"). You delivered your own proposal to the DNR on August 20, 2010, and submitted your first request for information regarding other firms on August 27th. The DNR denied that request on August 31st. After the Commission notified you that it had selected a "short-list" for the project, you requested the names of firms on that list. Again, the DNR denied your request. You claim that the DNR informed you that "there is no statutory exemption" authorizing its denial, but still refused to release the information to you.

DNR Chief Legal Counsel Kari Evans Bennett responded to your complaint on behalf of DNR and the Commission. She notes that Dr. James Glass, the individual who responded to your requests, is an ex-officio member of the Commission and the director of the DHPA, which serves as staff to the Commission. The Indiana General Assembly requires the Commission to submit a report by August of 2011, so the Commission requested proposals from firms to assist in the preparation of the report. Dr. Glass oversaw the proposal process.

Ms. Bennett notes that because your initial request sought information rather than records, the DNR never denied that request. Moreover, Dr. Glass responded to it and informed you that information regarding the other proposals would be available to you following the completion of the selection process pursuant to statutory procurement rules. In response to your request for information regarding the short-list, Dr. Glass acknowledged your request and informed you again that the information would be available to you after the selection process. Ms. Bennett argues that this did not constitute a denial of your request. She cites to I.C. § 5-22-9 for her position that the DNR deferred releasing information to you in order to comply with statutory procurement standards. After the Commission selected a consultant for the project and the selection process was completed, the DNR provided you with responsive records.

## 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 DNR and the DHPA are public agencies for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the agencies’ public records during regular business hours unless the records are excepted from disclosure as confidential or 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 (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). Records need not be physically produced within these timeframes; 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, it appears that Dr. Glass responded to your requests within the timeframes prescribed by section 9 of the APRA.

The APRA provides no timeframes for the actual production of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Here, the DNR cites to I.C. § 5-22-9-4 as the basis for withholding the proposals during the selection process. That statute provides, “Proposals must be opened so as to avoid disclosure of contents to competing offerors *during the process of negotiation*.” *Id.* (emphasis added). Accordingly, in my opinion it was reasonable for DNR to refuse to release the information to you until after the conclusion of the selection process.

## CONCLUSION

For the foregoing reasons, it is my opinion that the DNR, DHPA did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Kari Evans Bennett