



STATE OF INDIANA

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December 22, 2010

Mr. Zachary P. Elliot
Citizens Action Coalition of Indiana
603 E. Washington St., Suite 502
Indianapolis, IN 46204

Re: Formal Complaint 10-FC-294; Alleged Violation of the Access to Public Records Act by the Indiana Office of Utility Consumer Counselor

Dear Mr. Elliot:

This advisory opinion is in response to your formal complaint alleging the Indiana Office of Utility Consumer Counselor ("OUCC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* OUCC Executive Director for Legal Operations Abby Gray responded for the OUCC. Ms. Gray's response is enclosed for your reference.

BACKGROUND

You filed this complaint on behalf of the Citizens Action Coalition of Indiana ("CAC"). You allege that on October 13, 2010, the CAC submitted a public records request to the OUCC. The CAC requested access to "emails between former [Indiana Utility Regulatory Commission ("OUCC")] Chairman David Lott Hardy and former Utility Consumer Counselor Susan Macey from September 1, 2006 through December 31, 2007." The OUCC responded to your request on October 13th, but you had not received the emails as of November 19th. You argue that between October 13th and November 19th, a reasonable period of time had passed and the OUCC should have supplied the responsive records.

In response to your complaint, Ms. Gray states that on November 23rd, the OUCC provided you with all records in the OUCC's possession that are responsive to your request. When I contacted the OUCC to inquire as to why it took the OUCC from October 13th to November 23rd to produce the records, Chief Deputy Consumer Counselor Randy Helmen stated that the Indiana Office of Technology ("IOT") had to restore Susan Macey's emails before they could be reviewed for responsiveness. The restore was required because the requested records are approximately three to four years

old, and because Ms. Macey left the OUCC approximately three years ago, which deactivated her email account. Once restored, each email also had to be reviewed by OUCC attorneys to determine whether it contained confidential information that required redaction. Mr. Helmen stated that the OUCC completed this process as soon as practicable while continuing to perform the OUCC's essential functions.

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 OUCC is 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 OUCC's 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 a 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, it appears that the OUCC responded to your request the same day you submitted it in accordance with section 9 of the APRA.

The APRA provides no deadlines 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. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. 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 OUCC cites to the fact that Ms. Macey's deactivated email account contained thousands of emails that were several years old and had to be restored by IOT, reviewed after the restore for responsiveness, and screened for confidential information prior to release. In my opinion, the OUCC acted reasonably by completing the email retrieval, review, and redaction process between October 13th and November 23rd.

CONCLUSION

For the foregoing reasons, it is my opinion that the OUCC 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 style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Abby Gray