



STATE OF INDIANA

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November 21, 2012

Ms. Claire R. Hunter
335 Ridgepoint Drive
Carmel, Indiana 46032

Re: Formal Complaint 12-FC-317; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation

Dear Ms. Hunter:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Transportation ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Amy Miller responded in writing on behalf of the Department to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on September 4, 2012, you submitted a written request for records to the Department pursuant to the APRA. On September 13, 2012 and September 18, 2012, you maintain that you left voicemails for Ms. Miller inquiring about the status of your request. On September 20, 2012, you spoke with Ms. Miller. Ms. Miller advised that she had not received your APRA request until September 11, 2012 and would email you information regarding your request. You thereafter never received any further information or correspondence from Ms. Miller. On October 8, 2012 and October 19, 2012, you left voicemails for Ms. Miller regarding the status of your request. As of October 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you provide that you have yet to receive any records in response to your request.

In response to your formal complaint, Ms. Miller advised that the stated number of attempts that you have made to contact the Department regarding your request is inaccurate. Ms. Miller provided that she had attempted to contact you via email regarding your request, but the email address that was provided was not valid. The Department responded to your request in writing on September 12, 2012, one day after its receipt. Ms. Miller further advised that she left a voicemail message for you the week of October 26, 2012 regarding her previous email correspondence. Ms. Miller finally noted that the request was quite extensive and the Department was still working to gather all records that are responsive to it.

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 Department 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 Department’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 by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Again, section 9(b) requires that the agency respond within seven (7) days of the receipt of the request; not seven (7) days from when the request was mailed. 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, 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 of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). As the Department has indicated that it received your written request for records on September 11, 2012, to which it responded on September 12, 2012, it is my opinion that the Department acted in compliance with section 9(b) of the APRA in response to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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 APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-*

FC-56; 11-FC-172. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. See *Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, it would appear that a number of technology issues have arisen when the parties attempted to communicate with each other regarding the status of the request. Your request for records was received by the Department on September 11, 2012. On October 23, 2012, you have alleged that the Department has yet to provide any records that are responsive. Ms. Miller has advised that the Department continues to work on gathering the records that are responsive to your request, the request is quite broad, the Department has attempted to communicate with you regarding the status of the request but has been hindered due to an invalid e-mail address, and the Department continues to work on all other requests for records that have been submitted. At this point in time, it is my opinion that the Department has complied with the requirements of section 3(b) in its attempt to provide all records in a reasonable period of time. As the parties have now been provided with each other's respective correct contact information, I do not foresee the Department having any future issues returning your written or oral requests to provide an update as to the status of your request. Further, due to alleged expansive nature of the request by the Department, I would *strongly* encourage the Department to make periodic disclosures of records as they become available (emphasis added).

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department at this time has complied with the requirement of providing all records in response to a request submitted under the APRA in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Amy Miller