



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

April 12, 2012

Bryan K. Bullock  
7863 Broadway, Suite 222  
Merrillville, Indiana 46410

*Re: Formal Complaint 12-FC-68; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation*

Dear Mr. Bullock:

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

## BACKGROUND

In your formal complaint, you allege that on July 14, 2011, you submitted a written request for records to INDOT. On July 18, 2011, INDOT responded in writing to your written request and acknowledged its receipt. On September 28, 2011, you requested in writing that INDOT provide a status as to your July 14, 2011 request. On October 20, 2011, INDOT respond to your inquiry and provided that it was still gathering the requested information. On December 21, 2011, you again inquired with INDOT as to the status of your request. To date, you have not received any records that were responsive to your request. You believe that INDOT has failed to provide the records to you in a reasonable period of time, as required by the APRA.

In response to your formal complaint, Ms. Miller provided that all documents responsive to your request were provided on March 23, 2012. After receiving your request, it was initially forwarded to INDOT’s LaPorte District to gather the information. High employee turnover within the LaPorte District was a cause for part of the delay in the production of 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.”

*See* I.C. § 5-14-3-1. INDOT 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 INDOT'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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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). 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). 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, INDOT responded to your request with the timelines provided by Section 9 of the APRA.

The APRA does not prescribe timeframes for the actual production of 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 of the request. 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 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*.

You submitted your request to INDOT on July 14, 2011; all records responsive to your request were provided on March 23, 2012. Approximately eight months and nine days passed between your initial request and the production of records. INDOT has provided that the delay, in part, was caused by high employee turnover in its LaPorte District. I am not aware from the contents of your formal complaint or INDOT's response how many actual records were produced, how old the records were, how extensive the process was to gather and redact the records, and what, if any other responsibilities required of INDOT affected its ability to provide the records in a reasonable period of time. I would note that 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-260*. Here, it would appear all records were

provided on March 23, 2012. While I am mindful of the affect that employee turnover has on any operation of a public agency, it is my opinion that INDOT did not meet its burden to show that it produced all records in response to your request in a reasonable period of time. As INDOT has advised that all records have now been provided, I trust that this is in satisfaction of your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that INDOT acted contrary to the APRA by failing to produce all records in response to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Amy Miller