



STATE OF INDIANA

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January 30, 2014

Ms. Jan Boyd
8301 Forward Pass Rd.
Indianapolis, IN 46217

Re: Formal Complaint 13-FC-357; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation

Dear Ms. Boyd,

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 § 5-14-3-1 *et. seq.* The Department has responded via Ms. Amy Miller, Program Director. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 30, 2013.

BACKGROUND

Your complaint dated December 28, 2013, alleges the Indiana Department of Transportation (INDOT) violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On July 26, 2013, you received an acknowledgement letter from Ms. Amy Miller of INDOT pursuant to a records request seeking an inspection report from a June 28, 2012 meeting on your property. Between June 28, 2012 and the time of the submission of your formal complaint, Ms. Miller advised she was searching for, but had not yet produced, records responsive to your request. On December 31, 2013 INDOT indicated to you that the inspection report did not exist and INDOT did not have the records responsive to your request.

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 Ind.

Code § 5-14-3-1. The Indiana Department of Transportation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the INDOT's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

From the information provided, it appears as if the meeting on June 28, 2012 was a follow-up measurement to verify information associated with a stream impact review included in a United States Army Corps of Engineers ("USACE") permit application. Based on INDOT's response, no documentation exists from the June 28, 2012 visit. Any information relevant to the permit application would be in the custody of USACE and not INDOT. A public agency is not required to create a public record to respond to a request. Therefore, if INDOT does not have the records you seek or is not the custodian of USACE records, then they have not acted contrary to the APRA.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Department of Transportation has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Ms. Amy Miller