



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

December 12, 2014

Mr. Joseph Fritz
4537 Winnequah Rd.
Monona, WI 53716

Re: Formal Complaint 14-FC-257; Alleged Violation(s) of the Indiana Access to Public Records Act by the Newport Chemical Depot Reuse Authority

Dear Mr. Fritz,

This advisory opinion is in response to your formal complaint alleging the Newport Chemical Depot Reuse Authority ("NCDRA"), violated the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The NCDRA has responded via Ms. Elizabeth Morgan Burrows. Her response is enclosed for your review. 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 October 28, 2014.

BACKGROUND

Your formal complaint dated October 27, 2014, alleges the Newport Chemical Depot Reuse Authority violated the public records act by not releasing records to you in a timely manner.

On or about October 6, 2014, you submitted a request for public records to the NCDRA seeking information pursuant to farmland cash rent solicitations. The NCDRA responded on October 9, 2014 advising you of the status of your request. You made a subsequent request on October 16, 2014 seeking additional information. That particular request was acknowledged on the same day. You had not received an additional status update before you filed your complaint on October 27, 2014.

The NCDRA responded on October 29, 2014 advising it was in the process of gathering the information you requested and the documents would be forthcoming.

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 Newport Chemical Depot Reuse Authority 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 NCDRA’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.

After acknowledging a request, an agency has a “reasonable time” to produce records. See Ind. Code § 5-14-3-3. You base your allegations in part on a prior instance when a delay resulted in you filing a complaint. That situation was not opined upon by the prior Public Access Counselor.

Please be advised I address each complaint on a case-by-case basis. I do not judge the merit of a complaint based upon a prior violation or alleged violation. Opinions to formal complaints are written in a vacuum. Therefore, I cannot take any prior situation under consideration. Your complaint alleges approximately 15 business days had elapsed between the filing of your request and the filing of your complaint. I am not familiar with the records you seek and am unaware if the complexity of your request necessitates that particular amount of time. Regardless, the agency has assured this Office the records would be forthcoming in an expeditious fashion. It is my sincere hope you are in custody of those records as of the issuance of this Opinion.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Newport Chemical Depot Reuse Authority did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. William Laubernds