



STATE OF INDIANA

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September 20, 2016

Mr. James Gardner
6170 Joliet Road, Suite 200
Countryside, Illinois 60525

Re: Formal Complaint 16-FC-191; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation

Dear Mr. Gardner:

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"), Indiana Code § 5-14-3-1 et. seq. INDOT has responded to your request via Ms. Marjorie A. Millman, Esq., Staff Attorney. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 8, 2016.

BACKGROUND

Your complaint dated August 5, 2016, alleges the Indiana Department of Transportation took an unreasonable time in producing documents you requested on or about March 24 and July 6, 2016. On March 24, 2016, you requested documents related to an identified contract and supplemental material germane to the project. This request was acknowledged on March 30, 2016. You followed-up your request on July 6, 2016. On July 7, 2016, INDOT responded and apologized for the delay. They indicated they were searching for records responsive to your request. In its response, INDOT indicated it has sent you a number of documents which may be responsive to your request. It concedes the delay was due to poor interoffice communication and will work with you to complete the 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 Indiana Code § 5-14-3-1*. The Indiana Department of Transportation is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy INDOT'S disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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.

Timeliness is a critical element to a public records request. While access is not necessarily intended by the law to be immediate, it should be efficient and reasonably prompt. Your request has not been fully satisfied despite being submitted in March 2016. Nearly six (6) months later, it is still not entirely fulfilled. This is entirely too long to wait for documents. While your request is voluminous – and may lack a degree of specificity -INDOT willingly accepted your request and did not invite you to narrow it to a standard of particularity. If a public agency takes on a request, it should satisfy said request in an efficient manner and take care to be as responsive as possible.

While I applaud INDOT for continuing to work with you to provide documents, my expectation is that in the future, the agency be more mindful of the importance of public access. It appears as if they have taken steps to do so.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor the Indiana Department of Transportation has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Marjorie A. Millman, Esq.