
OPINION OF THE PUBLIC ACCESS COUNSELOR

LARISSA U. LIEBMANN¹,
Complainant,

v.

DEPT OF ENVIRONMENTAL MANGAGEMENT,
Respondent.

Formal Complaint No.
17-FC-266

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Environmental Management (“IDEM”) violated the Access to Public Records Act² (“APRA”). IDEM responded to the complaint through Deputy General Counsel, Valerie Tachtiris. In accordance

¹ This complaint was received and processed in the same batch as another formal complaint against IDEM by Mr. Thomas Dye. While the opinion does not directly address the facts of Mr. Dye’s complaint, it is similar enough to be incorporated by reference.

² Ind. Code §§ 5-14-3-1 to -10

with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 13, 2017.

BACKGROUND

Larissa U. Liebmann (“Complainant”) filed a formal complaint alleging IDEM violated the Access to Public Records Act by failing to provide responsive records within a reasonable time.

On July 17, 2016, Liebmann submitted a public records request to IDEM seeking the following:

...certain Discharge Monitoring Reports required under Cayuga Generation Station’s NPDES permit number IN0002763 on the Virtual File Cabinet. The reports are referred to as “Ground Water Seepage Data” and are the quarterly monitoring data of Seeps 5, 11, and 14 at Ash Disposal Area #1, as required under Section F Part 1 of the NPDES permit. Specifically, I am looking for the reports from monitoring during 2017.

IDEM sent a written acknowledgment of the request by email on July 20. Complainant submitted several status update requests between the July request and November 6 with little to no success. It should be noted that IDEM did acknowledge a backlog and delay due to certain changes. As of November 29, 2017, it appears as if the request had been fulfilled in the order in which it was received. IDEM contends it does not prioritize public access requests by volume but rather by order in which it was received on a first come-first served basis.

ANALYSIS

This formal complaint presents an issue of whether IDEM's response time—nearly six calendar months—constitutes a *reasonable time* as required by the Access to Public Records Act.

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.” Ind. Code § 5-14-3-1. IDEM is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy IDEM's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). Any request for inspection or copying must identify with *reasonable particularity* the record being requested, and be, at the discretion of the agency, in writing on or in a form provided by the agency. Ind. Code §§ 5-14-3-3(a)(1), -(2).

Reasonable Time

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, within a *reasonable time* after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

In this case, the parties disagree about what constitutes a *reasonable time* as it pertains to the Complainant's request. Notably, the APRA does not specifically define what constitutes a *reasonable time* as it pertains to the production of, or inspection of responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a reasonable time period under one circumstance may not be reasonable in another. What is more, the production of responsive records need not materially interfere with the regular discharge of the functions and duties of the public agency. *See* Ind. Code § 5-14-3-7(a).

The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

The factors affecting the reasonableness of timely production of documents include but are not limited to:

- The size of the public agency;
- The size of the request;
- The number of pending requests;

- The complexity of the request; and
- Any other operational considerations that may reasonably affect the public records process.

In this case, the formal complaint is dated approximately six calendar months after the submission of the public records request to IDEM. This is largely where this analysis departs from 17-FC-219. The request in this case was reasonably particular and met standards of specificity. While it is acknowledged that an agency would want to fairly and consistently order requests by priority of order alone, that may not always be the most efficient or effective way of handling those requests.

The records requested in the current instance appear to be slight in volume and complexity. The request could have been fulfilled in a matter of days or weeks but for the backlog. I do not necessarily think it best practice to put a small request in the back of the queue when a voluminous or monumental request is pending. Given that this is the third complaint against IDEM in a short period of time, I encourage the agency to re-strategize the way public records requests are handled. As always, this Office is available for guidance and advice.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor