



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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On March 9, 2017, the Complainant narrowed the request to a standard acceptable to the current administration and it was accepted. As of the date of the filing of his complaint, the records have not been released.

The Office of Governor Eric Holcomb responded to the complaint on June 16, 2017. The Governor indicated the Complainant's request was accepted, however, extenuating circumstances led to delay.

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." Ind. Code § 5-14-3-1. The Office of the Governor is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the Governor'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).

As the parties are almost certainly aware, the Access to Public Records Act mandates that records be released within a reasonable time. See Ind. Code § 5-14-3-3. Reasonableness, as this office has opined over the years, is dependent upon the size and complexity of a request as well as other administrative factors relative to the responding agency. Included in those factors is the size of the agency and resources available to expend on public records requests; the number of pending requests by an agency; and any other extra ordinary circumstances that might lead to delay.

Consider a similar situation faced by the Indiana Department of Education in early 2014 and referenced in Advisory Opinion of the Public Access Counselor 14-FC-15. As an incoming administration, IDOE faced an unprecedented amount of public records requests stemming from a news cycle covering the former Indiana Superintendent and a controversy surrounding certain emails released by his successor. There was immense interest from the media in those emails and the requests flooded in. I opined the following in a letter address to the Complainant:

You are correct the APRA mandates a public agency shall provide records to the requestor within a reasonable time (Ind. Code § 5-14-3-3(b)). Reasonableness is a subjective standard which changes on a case-by-case basis. To conclude the Department has not yet caught up with the numerous requests for information would not be beyond reason. Moreover, the APRA is not intended to interfere with the regular discharge of the functions or duties of the public agency or public employees. See Ind. Code § 5-14-3-7(a). It is my understanding the Department has only a



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limited number of staff members assigned to address public records requests. Considering the amount of attention this matter has generated, your request may still be waiting in queue.

You are likewise correct stating an agency should produce portions of a response as they become available in situations where the request is large. This has been my standing opinion as well as former Public Access Counselors. As your response is being processed, I encourage the Department to release the disclosable information in a piecemeal manner. However, *as they have not begun to work on your request*, this is not practical at this time.

Five months is certainly a long time to wait for records production. In normal circumstances, even for a request as large as yours, I would find a violation if the agency had not produced any records responsive to the request. Given the unprecedented amount of attention and public records requests received by the Department in light of August's news cycle, I do not find it unreasonable the Department has taken this amount of time to even commence investigation into the response to your request.

I have confirmed with the Governor's Office that its relatively small staff has been processing no less than fifty pending public records requests, many related to former Governor Pence's significantly voluminous emails. Those emails, as stated in the Governor's response, are hard copies unable to be electronically searched. To that end, the Governor has taken the proactive measure to outsourcing some of the public records duties to an outside firm for processing. While unusual, I applaud the move as I perceive it to be done in good faith in hope of improving efficiency and customer service. Unprecedented times call for unprecedented measures.

Therefore while the delay is justified in the interim, it is not my anticipation that long wait times for records will or should become the norm with this administration. Similar to the Department of Education situation, eventually, the former administration's records should eventually be processed and the burden of a long request queue alleviated. Case in point, in *Advisory Opinion of the Public Access Counselor 14-FC-186*, I found a violation on the part of IDOE for treating their queue too dismissively as time passed. And so it is with expectations in the current instance: it is my understanding the Governor's Office has been forthcoming with status updates to you. At some point, updates will need to be coupled with production. I have been candid with both parties in communicating my expectations as Public Access Counselor and will continue to do so. Based upon the current circumstances, I do not believe the Governor's Office has operated in an unreasonable manner.

Please do not hesitate to contact me with any questions.



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Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LHB", is positioned above the printed name of the Public Access Counselor.

Public Access Counselor

Cc: Joseph R. Heerens, Esq.