



STATE OF INDIANA

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February 9, 2009

Joseph Russell Pawlick
123 West Madison Street, Suite 600
Chicago, Illinois 60602

Re: Formal Complaint 09-FC-21; Alleged Violation of the Access to Public Records Act by the Michigan City Board of Aviation Commissioners

Dear Mr. Pawlick:

This advisory opinion is in response to your formal complaint alleging the Michigan City Board of Aviation Commissioners ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Board's response to the complaint is enclosed for your reference. It is my opinion the Board's response to the request was untimely but the Board did not otherwise violate the APRA.

BACKGROUND

You filed the present complaint on January 9, 2009, alleging that you submitted a request for access to records to the Board on December 11, 2008. You allege the Board failed to respond the request.

The Board responded to the complaint by letter dated January 22, 2009. The Board indicates it received the request on or about December 15. The Board contends that because the records you requested are maintained by the Michigan City Personnel Department ("Department"), the Board forwarded the request to the Department for response. The Board contends that due to inadvertent oversight, you were not immediately sent a response. The Board has now responded to the request and provided you copies of any records it maintains which are responsive to your request.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Board is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the

Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here, you submitted your request on December 11. The Board indicates it received the request on or about December 15. The Board further indicates it forwarded the request to the Department but did not respond directly to the request, believing the Department would do so. Even though the Board does not maintain the requested records, the Board had a duty under the APRA to respond to the request. An acknowledgement of receipt of the request and indication the requested was being forwarded to the appropriate department would have been sufficient. As such, the Board's response was untimely under the APRA.

The Board indicates it has now responded to your request and has provided you copies of any records it maintains which are responsive to your request. Based on this response to your request, it is my opinion the Board has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Board's response was untimely but the Board did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jeffrey Thorne, Sweeney, Dabagia, Thorne & Pagos, L.L.P.