

May 21, 2007

Corinne R. Finnerty
P.O. Box 90
North Vernon, IN 47265

Re: Formal Complaint 07-FC-103; Alleged Violation of the Access to Public Records Act by the Indiana Department of Environmental Management

Dear Ms. Finnerty:

This is in response to your formal complaint alleging that the Indiana Department of Environmental Management (“IDEM”) violated the Access to Public Records Act by failing to provide copies of documents in a timely manner. I find that IDEM has not violated the Access to Public Records Act because IDEM has made the records available.

BACKGROUND

You complain that IDEM has failed to provide copies of the inspection reports regarding confined animal feeding operations (CAFO) in six Indiana counties from 2002 to the present. Your request was mailed on March 1, 2007. IDEM mailed a response on March 12, 2007, stating that it would be compiling the records and would notify you when the copies were compiled.

You state that you called Sara Trobridge of IDEM because you had not received any records. She returned your call and left a voice mail message stating that it would take two to three more months to provide the requested copies. You believe that this timeframe is unreasonable.

I sent a copy of your complaint to IDEM. Ms. Melissa Farrington, Director of IDEM’s central file room responded. I have enclosed a copy of her response. Ms. Farrington explained that a preliminary review of the records shows that there are over five hundred CAFO inspection reports for the six counties for the five year time period. The inspection reports are in each CAFO file and must be retrieved from among other documents such as the permit application, the permit, management plans, enforcement records, correspondence, etc. IDEM called you to

discuss your request. During this call, IDEM explained to you that your request would require a great deal of staff time to sort through all of the CAFO files and extract the inspection reports for copying. IDEM estimated that it would take two to three months to complete the entire production of records. IDEM invited you to visit the file room and do the file sorting and copying yourself, if you needed the documents sooner than the anticipated date. The requested records remain available for public inspection and copying in the IDEM central file room.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A public agency is required to issue a preliminary response to a record request received by U.S. Mail within seven days of receiving it. IC 5-14-3-9(b). However, the APRA sets no specific time for producing copies of records. This office has stated that in the absence of any specific time within which records must be provided, the public agency should provide access to records within a reasonable time period under the facts and circumstances. Moreover, a public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees, IC 5-14-3-7(a), so long as the public agency does not deny the person the right to inspect and copy the records. IC 5-14-3-7(c).

In response to a request for records, a public agency shall either provide the requested copies to the person making the request, or allow the person to make copies on the agency’s equipment or on the person’s own equipment. IC 5-14-3-3(b).

The IDEM has explained that compiling and copying the estimated 500 inspection reports will necessarily entail two to three months’ time. Whether this is reasonable is a determination that would require evaluation of the other functions and duties of the agency and of IDEM central file personnel. In lieu of IDEM compiling and copying the records, IDEM has invited you to the file room to retrieve the inspection reports from the files and make the copies on IDEM’s equipment. This is suggested as one way to make the records available sooner, because IDEM personnel could assist in retrieving the files but you would be able to retrieve the inspection report and copy it without IDEM devoting its resources to the task. The IDEM has not violated the APRA by suggesting this alternative. In addition, the records you have requested are voluminous and are not centrally filed. Each inspection report is maintained in discrete file folders among many other records.

If IDEM performs the retrieval and copying, IDEM should make the records available at regular intervals rather than disclosing them once all of them are compiled. I have no information showing that IDEM has refused to make interim disclosures of the records.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Environmental Management has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Melissa Farrington