

September 19, 2007

Corinne Finnerty
PO Box 90
North Vernon, Indiana 47625

Re: Formal Complaint 07-FC-252; 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 the Indiana Department of Environmental Management (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by failing to respond to your request for records. I find that the Department should have sent you a response to your May 2, 2007 request reiterating the information contained in its response to your March 1 request but did not otherwise violate the APRA.

BACKGROUND

In your complaint you allege that you requested access to records from the Department on May 2, 2007. You indicate that in *Office of the Public Access Counselor Opinion 07-FC-103*, the counselor indicated the Department should make records available at regular intervals in response to your March 1 request. You further indicate that the counselor indicated three months was not unreasonable for production of the requested records. You filed your complaint on August 17, and I received it on August 20, alleging you had not received any records responsive to your request.

The Department responded to your complaint by letter from Melissa Farrington dated August 30. Ms. Farrington indicates that because your May 2 requests was nearly identical to your March 1 request, she did not reiterate the offer to allow you to come to the office and personally inspect the records rather than wait the two to three months it would take the Department to compile the records you requested. Ms. Farrington further indicates that providing records at regular intervals was not practical in this instance because the search and copying was not completed at a regular rate, providing records at intervals is a less efficient way to fulfill the request, and you did not request the records at regular intervals. Finally, Ms. Farrington indicates

she sent you a letter dated August 27 indicating the records were ready and inviting you to remit payment so the records may be sent to you.

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 Department 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 Department 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 "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be made orally or in writing. I.C. §5-14-3-3(a); §5-14-3-9. 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).

A public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. §5-14-3-8(b). The fee for copying documents of state agencies may not exceed ten cents per page for non-color copies. I.C. §5-14-3-8(d). The agency may require payment in advance of providing the copies. I.C. §5-14-3-8(e).

Here, the previous public access counselor addressed your March 1 request in *Office of the Public Access Counselor Opinion 07-FC-103*. In that opinion, Counselor Davis found no violation of the APRA when the Department indicated it would take two to three months to fulfill the request. She further suggested the Department make interim disclosures of records. I agree with Counselor Davis that the two to three months the Department indicated it needed to complete the request was not unreasonable. You filed your complaint on August 17, indicating three months had passed since your May 2 request. While I agree that two to three months is a reasonable amount of time to complete production for this request considering the volume of the request, I do not believe three months to be the absolute cut-off of reasonableness. If circumstances arose to require a bit more time for the Department to complete the request, I do not believe that to be unreasonable.

Regarding the response to your request, it is my opinion the Department should have responded to your May 2 request, even if that response was exactly the same as its response to your March 1 request. The APRA requires an agency to respond to each request, and does not provide an exception for requests similar to previous requests. I.C. §5-14-3-9(b). While this is a defect under the APRA, the substantive outcome was not affected by this. It is my understanding the Department has now provided you with an invoice for the requested records, after payment of which the Department will forward the records to you.

CONCLUSION

For the foregoing reasons, I find that the Department should have sent you a response to your May 2, 2007 request reiterating the information contained in its response to your March 1 request but did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Melissa Farrington, Indiana Department of Environmental Management