

October 24, 2007

Mindy Heidel
92223 Broadway Suite A
Merrillville, Indiana 46410

Re: Formal Complaint 07-FC-293; Alleged Violation of the Access to Public Records Act by the Office of the Governor

Dear Ms. Heidel:

This is in response to your formal complaint alleging the Office of the Governor (“Office”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by failing to produce the records you requested in a reasonable period of time. A copy of the Office’s response to your complaint is enclosed for your reference. It is my opinion the Office did not violate the APRA.

BACKGROUND

In your complaint you allege you submitted a request to the Office dated August 23, 2007 for copies of a number of records related to any proposed intermodal in LaPorte County. You received a response from Anita Samuel of the Office dated August 31 indicating the office received your request on August 28. Ms. Samuel further indicated the Office was working to gather any disclosable records and would be in contact with you in a reasonable period of time regarding the progress of your request. You submitted this complaint on September 21, and I received it on September 25, alleging the letter combined with no further response constituted a denial of access.

The Office responded to your complaint by letter from Ms. Samuel dated October 16. Ms. Samuel contends the Office’s response to your request was sent to you within the seven days required by the APRA. Further, Ms. Samuel contends the Office was in the process of identifying and reviewing documents when you filed your complaint. Ms. Samuel refers to *Opinion of the Public Access Counselor 03-FC-118*, wherein Counselor Hurst said nothing in the APRA requires production “within a specific time, in one piece, or in a manner that unreasonably interferes with the regular business of the public agency.”

Ms. Samuel indicates the Office does not believe an unreasonable time period had passed since your request and was not aware you interpreted that time period as a denial of access. Ms. Samuel indicates that after communication with you and the Indiana Port Commission, about whom you filed a similar complaint, you provided an amended request received by the Office on October 4. On October 9 the Office submitted a response to you, wherein the Office provided you with records responsive to your request. The Office also indicated certain records were being withheld from disclosure under the APRA, namely those falling under the exceptions to disclosure found in I.C. §5-14-3-4(b)(2) [attorney work product], I.C. §5-14-3-4(a)(1) [confidential pursuant to state statute], and I.C. §5-14-3-4(b)(6) [deliberative material].

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

The Office 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 Office 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. Past public access counselors have addressed this issue on several occasions. I have most recently addressed the issue in *Opinion of the Public Access Counselor 07-FC-249*, finding five weeks was not an unreasonable period of time for the Marion County Election Board to produce records pursuant to a request.

Here, the Office received your request on August 28 and sent you a response dated August 31, well within the seven days allowed by the APRA for response. I.C. §5-14-3-9(b). Your complaint centers around the amount of time the Office took to produce records responsive to your request. You filed your complaint after three and one-half weeks had elapsed since the Office had received your request. You did not contact the office to inquire about the status of the request prior to filing your complaint. It has long been the opinion of the public access counselor that records must be produced in a reasonable period of time, considering the facts and circumstances. Here the Office needed to gather any responsive records and then review those records to determine whether any mandatory or discretionary exceptions to disclosure under I.C. §5-14-3-4 applied to those records. This is in addition to the regular duties of the Office. I do not find the three and one-half weeks between the Office's receipt of your request and your filing of this complaint to be an unreasonable period of time for review and production.

As a final note, I understand the Office and the Indiana Port Commission communicated with you in late September, leading to your new request limiting the scope. I understand that the Office responded to the request and produced responsive records within four days of receiving that request.

CONCLUSION

For the foregoing reasons, it is my opinion the Office of the Governor did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Anita Samuel, Office of the Governor