

October 24, 2007

Mindy Heidel
92223 Broadway Suite A
Merrillville, Indiana 46410

Re: Formal Complaint 07-FC-294; Alleged Violation of the Access to Public Records Act by the Indiana Port Commission

Dear Ms. Heidel:

This is in response to your formal complaint alleging the Indiana Port Commission (“Commission”) 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 Commission’s response to your complaint is enclosed for your reference. It is my opinion the Commission did not violate the APRA.

BACKGROUND

In your complaint you allege you submitted a request to the Commission dated August 16, 2007 for copies of a number of records related to any proposed intermodal in LaPorte County. You received a response from David Haniford of the Commission dated August 23 indicating the Commission received your request. Mr. Haniford further indicated the Commission was working to review any responsive records and anticipated completing the review by October 15. You submitted this complaint on September 21, and I received it on September 25, alleging the letter combined with no indication when the records would be provided to you constituted a denial of access.

The Commission responded to your complaint by an undated letter from Mr. Haniford received by my office on October 11. Mr. Haniford contends the Commission’s indication it would complete its review of responsive records by October 15 was a reasonable one given the volume of day-to-day activities of Mr. Haniford, who was responsible for responding to the request and reviewing the records before production. Mr. Haniford further indicated he has had multiple discussions with you and with Louis Casale regarding your request in an attempt to narrow the request so the Commission could provide you with only those materials you seek.

Regarding the specific records you requested, the Commission has now produced or denied records responsive to your request. Regarding the confidentiality agreement you requested, the Commission indicated you have already received it from another agency but would provide you with an additional copy at your request. Regarding your general request for any record in any way related to the proposed intermodal, the Commission has provided you with several records, some of which have been redacted to exclude non-disclosable or non-responsive information. Regarding your request for copies of minutes, the Commission indicated it has no responsive records. Finally, the Commission 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 Commission 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 Commission 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 Commission received your request on or after August 16 and sent you a response dated August 23, which is 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 Commission took to produce records responsive to your request. You filed your complaint after approximately one month had elapsed since the Commission had received your request but before the date the Commission provided you for completion of review. You did not contact the Commission 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 Commission 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 Commission. I do not find the approximately one month time period between the Commission's receipt of your request and the date the Commission indicated it would complete its review to be an unreasonable period of time for review and production.

As a final note, I understand the Commission and the Office of the Governor communicated with you in late September, leading to your new request limiting the scope. I understand that the Commission 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 Indiana Port Commission did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David Haniford, Indiana Port Commission