



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 11, 2012

Debbie Lowe
c/o Carroll County Comet
114 E. Franklin Street
Delphi, Indiana 46923

Re: Formal Complaint 11-FC-308; Alleged Violation of the Access to Public Records Act by the Delphi Municipal Airport

Dear Ms. Lowe:

This advisory opinion is in response to your formal complaint alleging the Delphi Municipal Airport ("Airport") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Abigail Diener, Attorney, responded on behalf of the Airport. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you hand-delivered a written request for records to the Airport on December 8, 2011. You personally spoke with Jeff Stankard, Secretary of the Airport's Board of Aviation, regarding your request and he agreed to visit your office on December 9, 2011. You further allege that he did not come to your office on December 9, 2011 nor did the Airport respond to your APRA request. On December 9, 2011, you spoke with Mr. Stankard, who provided that he had been too busy to comply with the request that day. He advised that he would visit your office on December 12, 2011, to which he failed to do. You spoke with Mr. Stankard on December 12, 2011, who stated that he would visit your office the following morning, which he again failed to do. Throughout this process, Mr. Stankard indicated that he had some of the requested materials and had contacted Dean Trennepohl, President of the Airport's Board of Aviation, for those records in Mr. Trennepohl's possession. Mr. Stankard indicated to you that Mr. Trennepohl told him that "he would not give him the information for any of the meetings Mr. Stankard had scheduled with you."

In response to your formal complaint, Ms. Diener advised that Mr. Stankard personally received your written request at his residence on December 8, 2011 at 6 p.m. You indicated to Mr. Stankard that pursuant to the APRA he needed to provide all records responsive to your request within twenty-four hours. Mr. Stankard informed you

at that time the he had not been able to attend many of the Board meetings in 2011 and did not have in his possession any of the documents that you sought. Mr. Stankard advised you that he would contact the appropriate parties and get the records to you. Mr. Stankard did not, at anytime, state that he would not provide the requested records or deny your request.

On December 9, 2011, Mr. Stankard left a voicemail for Mr. Trennepohl, advising him of your request. Mr. Stankard did not speak directly to Mr. Trennepohl, nor did Mr. Trennepohl advise Mr. Stankard to deny you request. Mr. Trennepohl has not spoken to you at any point during this process nor has he received a copy of your request. Mr. Stankard then contacted Mr. Ross, consultant for the NGC Corporation, who advised Mr. Stankard that he would gather the documents in his possession and provide them to him. Thereafter on December 9, 2011, Mr. Stankard informed you that the Airport would comply with your request, was in the process of obtaining the documents, but he would not be able to provide the records that day. Mr. Stankard did not tell you that Mr. Trennepohl would not be providing the requested records.

During the weekend of December 10-11, 2011, Mr. Stankard spoke with Mayor Randy Strasser regarding your request. Mayor Strasser indicated that much of the requested information was available from the City Clerk-Treasurer, and that he would speak to the Clerk-Treasurer regarding obtaining the requested documents. After receiving your formal complaint filed with the Public Access Counselor's Office, Mr. Stankard was unsure whether to provide the information that had been gathered to you. Ms. Diener has advised that once all of the records are provided to her, she will review them to ensure they are eligible for disclosure, and will immediately provide those to you.

Ms. Diener maintains that the Airport and City of Delphi fully complied with your request pursuant to the APRA. Mr. Stankard acted immediately on your request upon it receipt and at no point did the Airport or City of Delphi deny your request. As you filed your formal complaint with the Public Access Counselor's Office less than eight days after submitting your request to the Airport, it did not allow the agency a reasonable amount of time to comply with your request. As such, it is the Airport's belief that it did not violate the APRA in responding to your request.

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." *See* I.C. § 5-14-3-1. The Airport is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Airport's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).



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A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Your written public records request was hand-delivered to the Airport on December 8, 2011. As such, the Airport was required pursuant to section 9 of the APRA to respond, in writing, within twenty-four hours of receipt of the request. The Airport acted contrary to the APRA when it failed to respond in writing to your hand-delivered written request within twenty-four hours of its receipt. *See* Opinion of the Public Access Counselor 05-FC-176; 11-FC-84.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. The Airport has maintained that at no time did it deny your request. You allege that Mr. Stankard indicated to you that Mr. Trennepohl had advised that as to the records sought in Mr. Trennepohl's possession, they would not be provided. Accordingly, if the Airport denied your request without citing to specific exemption authorizing their withholding, it acted contrary to the APRA. However, if the Airport never denied your request, it is my opinion that it has not violated the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

You submitted your written request to the Airport on December 8, 2011. Although the Airport did not respond in writing to your request as required by Section 9 of the APRA, it is not disputed that Mr. Stankard personally spoke to you regarding your request on December 8th, 9th, and 12th. Ms. Diener has provided that the Mr. Stankard was unsure how to proceed with your request upon receiving the formal complaint filed with the Public Access Counselor's office only eight days after your submitted your original records request. From the Airport's response, it consulted with multiple individuals in order to produce all records that were responsive to your request. After collecting all of the respective records, Ms. Diener advised that your request would immediately be provided to you after she has had the opportunity to review the records as required by the APRA. As such, it is my opinion that the Airport will have responded to your request in a reasonable period of time if it provides all records by January 20, 2011.

CONCLUSION

For the foregoing reasons, it is my opinion that the Airport acted contrary to the requirements of section 9 of the APRA when it failed to respond in writing within twenty-four hours of its receipt of your written, hand-delivered request. If the Airport never communicated to you that your request was denied, it is my opinion that it did not violate the APRA. Finally, if the Airport provides all records responsive to your request by January 20, 2011, it is my opinion that it will have responded to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Abigail Diener