



STATE OF INDIANA

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June 24, 2014

Mr. Vincent D. Walker
Westville Correctional Facility
5501 South 110 West
Westville, IN 46391

Re: Formal Complaint 14-FC-111; Alleged Violation of the Access to Public Records Act by the Indiana Office of Attorney General

Dear Mr. Walker,

This advisory opinion is in response to your formal complaint alleging the Indiana Office of Attorney General (“OAG”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The OAG has provided a response to your complaint via Mr. Matt Light, Esq. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 22, 2014.

BACKGROUND

Your complaint dated May 13, 2014 alleges the Indiana Office of Attorney General (“OAG”) violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

In a letter dated January 1, 2014 and received by the OAG on January 30, 2014, you requested certain records from the OAG. Your request was acknowledged on February 12, 2014. At the time of your complaint, you had not received additional information from the OAG. Your complaint alleges this delay is unreasonable. You also request in your complaint “[m]ay Matt Light add the ‘notices’ mailed to Bruce Lemmon, Charlene Burkett and Cynthia Totten to my FOIA Request.”

The OAG responded to your complaint by a letter dated June 12, 2014. Included in their response was a letter dated May 27, 2014, sent to you from the OAG, which is potentially responsive to your request. In the May 27, 2014 letter, the OAG requested additional information from you in order that they may better locate certain records you requested. The OAG also informed you that some records are no longer possessed by the OAG in

accordance with the relevant records retention schedule, and also informed you certain records were available and would be sent to you upon their receipt of copy fees from you.

The OAG admits that due to an internal error, your response was not acknowledged on time. However, you did not allege a violation in regards to the delay of the acknowledgement. The OAG, in their response, does not explicitly argue their delay in satisfying your request was reasonable. If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. However, the OAG does assert they have been actively working to satisfy your request. The acknowledgment issue will not be incorporated further in this Opinion.

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 Ind. Code § 5-14-3-1. The Indiana Office of Attorney General is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the OAG’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The OAG has included selected portions of your request in their response, although I have not had the opportunity to review your original initial request. From what they have provided, it appears your requests are sufficiently complex. In fact, there are some elements which prompted the OAG to ask you to clarify your request. In that regard, I do not take exception with the amount of time the OAG has taken to produce records responsive to your request.

The one concern I would mention in this case regards best practices of an agency facing a relatively large or complex request. While I do not have the requisite information to determine if this is possible in the current case, I routinely encourage agencies to be in semi-regular communication with a requester to update them on the status of his/her request. This could be as little as a once-a-month progress report in letter format advising you of a records search. Furthermore, a response to a request does not need to be released solely upon finalization of the request. Trickleing out information as it becomes available often alleviates concerns requesters may have with an agency’s progress. While timeliness is not necessarily an issue in the current case, the OAG should be mindful that reasonable communication can mitigate or prevent complaints.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Office of the Indiana Attorney General has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Matt Light, Esq.