



STATE OF INDIANA

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September 12, 2014

Mr. Kurt J. Disser
7210 E. County Rd. 700 N.
Brownsburg, IN 46112

Re: Formal Complaint 14-FC-175; Alleged Violation of the Access to Public Records Act by the Indiana Professional Licensing Agency

Dear Mr. Disser,

This advisory opinion is in response to your formal complaint alleging the Indiana Professional Licensing Agency ("IPLA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The IPLA responded to your complaint via Mr. Michael A. Minglin, Esq. His response is enclosed 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 August 11, 2014.

BACKGROUND

Your complaint dated August 11, 2014, alleges the Indiana Professional Licensing Agency violated the Access to Public Records Act by delaying the production of records responsive to your request.

On or about July 24, 2014, you submitted a public records request to the IPLA seeking personnel records related to the Director of the Indiana Board of Pharmacy. The IPLA responded in a timely manner the next day on July 25, 2014 indicating they would search for the records and respond accordingly. As of the date of your complaint, you had not received any information from the agency. You speculate this may be because of the purpose behind your requesting the documentation.

On August 25, 2014, the IPLA produced records responsive to your request, as well as explanations as to why some of them did not exist and therefore could not be produced.

ANALYSIS

The public policy of the APRA states that “a providing person 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 Professional Licensing Agency 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 IPLA’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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (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.

According to Ind. Code § 5-14-3-3, no request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. This has been construed by former Public Access Counselors and this Office that this provision also prohibits an agency from withholding material because the information may be used for embarrassing or incriminating purposes. This Office does not comment on those kinds of controversies nor does it have any indication the IPLA has intentionally withheld or delayed information due to your allegations.

The production of documents took less than 30 business days. For a State agency, this is typically not an extraordinarily long time for public access. Access is not immediate and agencies are not expected to provide instant information. Ideally, an agency would respond to requests as quickly as possible. I have no indication to believe the IPLA has intentionally delayed the release of information. It is my sincere hope the eventual production of documents has satisfied your request.

CONCLUSION

For the foregoing reasons, the Indiana Professional Licensing Agency has not violated the APRA.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Michael A. Minglin, Esq.