



STATE OF INDIANA

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October 28, 2014

Mr. Floyd Lyster
5337 S. 700 E.
Waldron, IN 46182

Re: Formal Complaint 14-FC-248 (Expedited); Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Board of Animal Health

Dear Mr. Lyster,

This advisory opinion is in response to your formal complaint alleging the Indiana Board of Animal Health ("BOAH") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Sarah A. Simpson, Esq., Director of Legal Affairs and Enforcement, responded on behalf of BOAH. Her 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 October 20, 2014. Per your request, this Opinion has been expedited.

BACKGROUND

Your complaint dated October 20, 2014, alleges the Indiana Board of Animal Health 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).

On September 8, 2014 and again on October 6, 2014 you delivered two bison for slaughter to the local meat locker. The bison were considered "suspect" by an inspector and the BOAH field veterinarian advised you to wait to bring in more bison for slaughter until lab results could be obtained. The first disposition report was delivered to you on September 10, 2014.

On October 9 and 16, 2014, you submitted two public access requests to BOAH seeking documentation related to the determination the animals delivered were unfit for consumption. BOAH acknowledged your request on October 16, 2014 regarding the first request. It is unclear if they acknowledged the October 16, 2014 request; however, on October 20, 2014 the BOAH delivered to you the requested documents. They also state they are working to produce additional documents to satisfy your request.

On October 27, 2014, you submitted a letter to this Office expressing dissatisfaction with the records you received and identified some perceived irregularities. Please be advised the issues in your October 27, 2014 letter are outside the scope of the Office of the Public Access Counselor. Irregularities or misinformation contained in public records are an administrative issue and not an access issue.

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 Board of Animal Health 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 BOAH’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.

From the information provided, it appears as if the BOAH met all of their statutory deadlines for acknowledging your requests. Furthermore, it also appears as if their production of documents was effectuated within a reasonable time. There does not seem to have been any denial of access. The October 20, 2014 letter alludes to additional documentation which may or may not be provided, but the BOAH is undertaking the retrieval process and has not yet disclosed everything they may have. Public agencies regularly deliver documentation as it becomes available. I regularly advise agencies to release information as it is retrieved instead of waiting until it all becomes available at one time. This best practice recommendation appears to have been followed by the BOAH. From the documentation before me, there does not appear to be any denial of access.

CONCLUSION

It is the Opinion of the Public Access Counselor the Indiana Board of Animal Health did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Sarah A. Simpson, Esq.