



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

May 28, 2014

Ms. Linda J. Clark
19620 County Road 16
Bristol, IN 46507

Re: Formal Complaint 14-FC-93; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Department of Environmental Management

Dear Ms. Clark,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Environmental Management ("IDEM") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IDEM has responded via Ms. Melissa A. Farrington, Public Records Office Director and Mr. Niles M. Parker, Assistant Deputy Commissioner. Their 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 April 28, 2014. Your complaint has not been given priority status as you have not identified a particular proceeding pursuant to 62 IAC 1-1-3.

BACKGROUND

On March 26, 2014, you submitted a public records request via email to IDEM's Office of Water Quality; Storm Water Section requesting information regarding a wetland permit issued for the Keystone Square in Goshen, IN. The request was acknowledged by IDEM's Public Records Office on that same day. The indicated they would follow up with you after a search for the documents had been conducted.

You sent a follow up request on April 17, 2014 to the Public Records Office requesting release of the documentation or alternatively, justification for the delay. It does not appear you received a response. Finally, you phoned the Public Records Office on April 24, 2014 when you were told the records were forthcoming.

IDEM has responded by indicating the records responsive to your request have been provided to you as of May 9, 2014, however, they do not identify a reason for the delay in producing the records.

DISCUSSION

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 Department of Environmental Management 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 IDEM’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.

It is my genuine hope the records provided to you after the filing of your formal complaint has satisfied your initial request. You take exception to the delay in production and also the lack of correspondence from IDEM between March 26 and the filing of your complaint. Again, IDEM has not identified a reason for the delay or lack of communication during this time period.

I have stated in prior Opinions, my expectation is that a public agency be in semi-regular communication with a public records requestor updating them periodically of the status of the request. This isn’t always practical with every agency depending on the size of the agency and the volume of requests, however, IDEM has not posited this as a defense. It appears the filing of your formal complaint was the catalyst for production. This should not be the case. The timeframe for production is not immediate, but rather within a reasonable time according to Ind. Code § 5-14-3-3(b). It may very well have taken over a month to collect and review these documents. I do not have sufficient information from IDEM arguing as to why this may have been. In any case, best practice is keeping a requestor periodically advised of the status of their public records request.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Department of Environmental Management acted contrary to the Access to Public Records Act by not providing you records in a reasonable amount of time or at least updating you on the status of their search. You have since been provided the records you seek. I trust this satisfies your request and you have not been unduly prejudiced by the delay.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Melissa Farrington; Mr. Niles Parker