



STATE OF INDIANA

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July 15, 2016

Ms. Beth Czukas, Esq.
C/o Barber & Bauer LLP
123 Northwest Fourth Street, Suite 402
Evansville, Indiana 47708

Re: Formal Complaint 16-FC-128; Alleged Violation of the Access to Public Records Act by the State of Indiana, Indiana Department of Transportation

Dear Ms. Czukas:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Indiana Department of Transportation (“INDOT”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. INDOT responded to your complaint Ms. Kristi Shute, Staff Attorney. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 3, 2016.

BACKGROUND

Your complaint dated June 3, 2016, alleges the State of Indiana, Indiana Department of Transportation violated the Access to Public Records Act by failing to fulfill your records request within a reasonable period of time.

On April 20, 2016, you requested twenty-two (22) sets of documents related to Interstate Highway 69 construction. Your request was amended on April 22, 2016. INDOT acknowledged both of these requests in a timely manner. The most recent communication you provided, dated May 18, 2016 informed you INDOT was still gathering records.

On June 22, 2016 INDOT responded. INDOT notes on May 31, 2016 a status update email was sent to INDOT. Ms. Amy Miller informed you she could not provide an estimate of when the records would be provided, because she was a point of contact and not the person gathering the records. INDOT also notes due to an administrative error, Ms. Miller did not forward the amended request to INDOT staff.

On June 8, 2016 Ms. Shute contacted your attorney, informing him of the delays in production, but stated INDOT would provide records on a piecemeal basis until the request had been fulfilled.

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

First, I note an error with your request. Your request states documents must be made available within seven (7) days of receipt of this request. This is incorrect. The APRA merely requires a **response** within seven (7) days. 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. You received an appropriate response from INDOT, as you note in your complaint. (***Emphasis Added***)

The APRA does not specify a time for production or inspection of responsive records. Instead, it states a request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. Reasonableness depends on the circumstances, including: size of the public agency, number of pending requests, complexity of the request, and any other operational consideration which may reasonably affect the public records process. Your request was a very broad request, even after you amended it.

For example, request number 8 wanted all documents, letters, emails and other correspondence related to the opening of Interstate Highway 69, between any INDOT employee(s) and contractors, subcontractors, and/or Governor Mike Pence’s office from January 1, 2014 through April 22, 2016. Despite your attempt to amend the request, this request still lacks reasonable particularity. As I stated in *Advisory Opinion 16-FC-10 & 16-FC-109*; a request for records must have an identified subject matter, a date range as well as a named sender and receiver.

You have not provided any appropriate search terms. The phrase “related to the opening of Interstate Highway 69” is not a search term because it leaves to INDOT’s discretion what records are considered “related to” the Highway. Further, you have not named valid senders or receivers. A request for records provided from any INDOT employee(s) and contractors, subcontractors, and/or Governor Mike Pence’s office” is not a true request for records and instead amounts to a request which casts a very wide net akin to a fishing expedition.

Despite this lack of reasonable particularity, INDOT accepted your request. I have stated on numerous occasions when a request for records involves a large number of documents, a public agency should release the documents piecemeal and maintain open communication with the requestor as good customer service. It appears INDOT followed this guidance, based on its June 8, 2016 correspondence to your attorney.

Several delays occurred in the time between the submission of your amended request and the filing of your complaint. The APRA requires a response within a reasonable time. However, due to an

administrative error, it does not appear INDOT began releasing records until June 8, 2016. While this lapse in oversight is troubling, I do not believe INDOT was acting in bad faith or intentionally attempting to hide any records from disclosure. It is my understanding INDOT has begun to release records to you. It is my sincere hope this production of records begins to satisfy your request and you receive the totality of documents in an efficient and timely manner. I therefore decline to make a determination or find a violation on the part of the agency, however, I encourage you to keep my Office updated of any further issues in this situation.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Kristi Shute; Ms. Lori Torres