



STATE OF INDIANA

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September 5, 2008

Dwane Ingalls
1600 South Paddock Road
Greenwood, Indiana 46143

Re: Formal Complaint 08-FC-200; Alleged Violation of the Access to Public Records Act by the Indiana Office of Utility Consumer Counselor

Dear Mr. Ingalls:

This advisory opinion is in response to your formal complaint alleging the Indiana Office of Utility Consumer Counselor ("OUCC") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The OUCC's response to the complaint is enclosed for your reference. It is my opinion the OUCC did not violate the APRA.

BACKGROUND

You allege that you sent to the OUCC a request for access to records; the request was dated July 12, 2008. You received a response from the OUCC dated July 18, wherein the OUCC Director of External Affairs, Anthony Swinger, indicated he was consulting with staff regarding the request and would respond in the near future. You allege that on July 31 you relayed your disappointment in OUCC's "lack of response" to your request. On August 1 the OUCC reiterated the response. On August 4 you received records in response to your request. You allege the records were not responsive to your request. You allege that on August 6 you informed the OUCC the documents were not responsive to your request. Finally, on August 12 the OUCC indicated it would not further consider the request. You mailed the present complaint on August 21, and my office received it on August 22. You allege the OUCC has denied you access to records.

The OUCC responded to the complaint by letter dated September 4 from A. David Stippler. The OUCC provides the same timeline you provided, indicating that in the period between receiving your request and sending the documents to you on August 4, the OUCC reviewed the records to confirm they contained no attorney work product or trade secrets that would be considered confidential and therefore nondisclosable under the APRA. The OUCC contends it has complied with the APRA by responding to your request within four days and providing you copies of the records eleven business days after receipt of your request.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The OUCC is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the OUCC during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the OUCC received your request on July 14 and responded by letter dated July 18. This is well within the seven days allowed by the APRA. See I.C. § 5-14-3-9(b). While the APRA does not provide a timeline for production of records, this office has repeatedly opined that records must be produced in a reasonable amount of time. While there is no definition of a reasonable amount of time, certain facts and circumstances must be considered. Here, the OUCC had to review the records you requested to determine whether they contained any nondisclosable information. Certainly eleven business days is not an unreasonable amount of time to retrieve and review the records.

It is my understanding you believe the records the OUCC sent to you are not responsive to your request. In its August 12 letter, the OUCC contends the records provided are all the documents the OUCC has on file regarding the cause number you identified. The OUCC further indicates that it does not compile records by topic in the manner you reference in your July 12 letter. The APRA requires a requester to identify with reasonable particularity the records being requested. See I.C. § 5-14-3-3(a). I have recently addressed a similar issue in *Opinion of the Public Access Counselor 08-FC-176*.

“Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

In my opinion, when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. See *Opinions of the Public Access Counselor 08-FC-135, 07-FC-353*. . . If a request is not made with reasonable particularity and an agency attempts to provide the records the agency’s employee thinks the requester is seeking, it is likely the agency could misinterpret the request and provide too many records, not enough records, or the incorrect records. For instance, I often hear from agencies that a person has requested “all records related to expenses” for a certain amount of time. What the requester generally does not understand is just how many records related to “expenses” an agency might maintain. In this example, an agency might maintain copies of checks, bank statements, ledgers, budget worksheets, approved budgets, claim vouchers, supply orders, internal memoranda related to orders for supplies, and any number of other records. It is my advice to agencies in this situation that the agency ask the requester to identify with reasonable particularity which expense records he or she is seeking.

Id., available at http://www.in.gov/pac/advisory/files/formal_opinion_08-FC-176.pdf

Here you have requested “the following records of your most recent detailed review of the following line item expenses reported by IPL within their Cause No. 38703 filings, as further described above. . .” The OUCC contends it has provided you with all documents it maintains pertaining to that cause number. The OUCC further contends that it does not compile records by topic in the manner you reference in your July 12 letter. Nothing in the APRA requires the OUCC to *conduct research* to determine which records it might maintain which might contain information you seek, as illustrated by my example in the preceding paragraph regarding “all records related to expenses.” Instead, the APRA requires the agency to *retrieve* records you identify with reasonable particularity. In my opinion, the OUCC has fulfilled that duty here by providing you records related to the cause number you provided. To the extent you can further identify additional records you seek, it would be my advice to submit another request to the OUCC clearly identifying those additional records.

CONCLUSION

For the foregoing reasons, it is my opinion the OUCC has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: A. David Stippler, Indiana Office of Utility Consumer Counselor