

January 14, 2008

Adam Lenkowsky and Tasha Roberts
Roberts & Bishop
118 North Delaware Street
Indianapolis, Indiana 46204

Re: Formal Complaint 08-FC-12; Alleged Violation of the Access to Public Records Act by the Indiana Department of Insurance

Dear Mr. Lenkowsky and Ms. Roberts:

This is in response to your formal complaint alleging the Indiana Department of Insurance (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. A copy of the Department’s response to your complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

BACKGROUND

In your complaint you allege that you submitted requests to the Department on October 11, 2007, October 25, 2007 and November 30, 2007. You allege that you were contacted by the Department about its compliance with the request. You filed this complaint on December 13, alleging you have not yet received any records responsive to the request.

The Department responded to your complaint by letter dated January 3, 2008 from Tina Korty, an attorney with the Department. Ms. Korty contends the Department received your first request on October 16 and contacted you by telephone on October 17. Because the request was for an extensive amount of information which would require coordination with the Indiana Office of Technology (“IOT”), Ms. Korty indicated the request would take some time to process. She indicated she expected the process would take four weeks. On October 31 Ms. Korty sent you an electronic mail message (“email”), indicating she was still working on the request.

Ms. Korty further indicates there was a miscommunication between the Department and IOT regarding the request. Ms. Korty learned of the error on December 15, which she indicates is the busiest month of the year for the Department’s legal staff. This is important to note because the legal staff needed to review the records you requested for any nondisclosable information.

Regarding the October 25 request, Ms. Korty indicates she contacted you on October 31 to let you know the Department was compiling the information. While this request was less extensive, Ms. Korty indicates the Department was focused on the October 11 request and intended to produce records for both requests at the same time. Regarding the November 30 request, Ms. Korty recalls contacting you to indicate the request would be fulfilled but does not have documentation of calling you.

During the week of December 17, the Department's Chief Legal Counsel, Doug Webber, learned from IOT that to fulfill your October 11 request, IOT would need to rebuild the email box for every employee for the last year, and the process would take several months. Mr. Webber learned as well that if the request were limited to approximately ten employees, the process would take about one month. Mr. Webber and Ms. Korty telephoned you on December 21, but you were unable to discuss the matter. When they called you on December 26, Ms. Korty explained the delay and proposed rebuilding eleven mailboxes the Department believed would contain the emails responsive to your request. Ms. Korty also indicated she would be able to provide partial production to the remaining requests in a short time.

Ms. Korty indicates you sent a letter to the Department dated December 27, in which you indicated you were requesting the rebuilding of only three email boxes. Also on December 27, the Department delivered to you a partial response to your October 11 and November 30 requests and a complete response to your October 25 request. Ms. Korty indicates the remainder of the records cannot be produced until IOT rebuilds the email boxes.

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." I.C. §5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department 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 "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

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.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here the agency responded to your initial requests within the time provided by the APRA. The Department responded to your request upon receipt indicating it was compiling the information. I do not understand that you allege you sought a status update and were ignored. Rather, you filed your complaint to inquire whether the time for production was unreasonable.

It is my opinion the Department has demonstrated it is working to produce the documents you requested in a reasonable amount of time. The Department indicated it has been working with IOT to produce the records responsive to your request which are still outstanding. The Department has also telephoned you to inquire about narrowing the search so as to complete the production in a shorter time.

The Department delivered records to you on December 27. I do not believe this to be an unreasonable amount of time to procure and complete the review of the volume of records you requested during the legal staff's busiest time of the year. I generally recommend a public agency produce documents as they become available, and I understand the Department has provided you with some records while awaiting other records from IOT. This further displays the effort the agency has made to provide transparency in government and provide access to public records.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Tina Korty, Indiana Department of Insurance