



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

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

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Ms. Lisa Karus
c/o Wuertz Law Office, LLC
10 W. Market St.
Suite 1025
Indianapolis, IN 46204
kaye@wurtzlaw.com

Re: *Formal Complaint 10-FC-121; Alleged Violation of the Access to Public Records Act by the Indiana Department of Environmental Management*

Dear Ms. Karus:

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.*

BACKGROUND

In your complaint, you allege that you presented yourself at IDEM's office to obtain information relating to a grant. While at the office, the clerk retrieved the record and you had it in your hands, but the clerk denied your request to take copies with you because IDEM's legal department would need to review the request. You claim that "[b]y failing to provide the documents while [you were] present at the public agency during normal business hours, the IDEM violated the Indiana Access to Public Records Act."

In response to your complaint, IDEM Public Records Advisor Lori Kyle Endris denies that IDEM violated the APRA. She claims that you were never denied access to the records you sought, but that the records you had in your hand needed to be redacted before their release due to the fact that they contained information classified as confidential under Subsection 4(a)(1) of the APRA. Ms. Endris also notes that IDEM produced the records as soon as possible given that it currently has sixty-four (64) pending records requests that also require the agency's attention. Finally, Ms. Endris has informed me that you received all responsive records on or about May 25, 2010.

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. IDEM is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy IDEM’s public records during regular business hours unless the public records are excepted from disclosure as 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. However, nothing in the APRA indicates that an agency’s failure to provide a requester with “instant access” to requested records constitutes a denial of access. *Opinion of the Public Access Counselor 09-FC-192*. “It is the responsibility of the public agency to **respond** to requests for access to public records within a specified time period. The APRA does not set any time periods for **producing** public records, merely for responding to the request.” *Opinion of the Public Access Counselor 02-FC-09* (O’Connor; advising that an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added).

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency 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 ultimate 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, Ms. Endris states that the records were not provided to the same day that you first requested them from IDEM because they needed to be reviewed by IDEM’s attorneys to ensure that any and all confidential information was redacted prior to disclosure. The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). Thus, IDEM did not violate the APRA by delaying the disclosure of the records so that its legal department could redact

confidential information therein. *See Opinion of the Public Access Counselor 10-FC-38.* Moreover, the fact that IDEM produced your records within two weeks of your request -- in spite of the fact that IDEM had approximately sixty-four (64) other pending records requests -- indicates that IDEM produced the records within a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that IDEM did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Lori Kyle Endris