



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

August 8, 2011

Mr. David L. Ditman
401 N. Randolph Street
Indianapolis, Indiana 46201

Re: Formal Complaint 11-FC-167; Alleged Violation of the Access to Public Records Act by the Indiana Governor's Office

Dear Mr. Ditman:

This advisory opinion is in response to your formal complaint alleging the Indiana Governor's Office (the "Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Anita Samuel, Assistance General Counsel, responded on behalf of the Office. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege you submitted a request in writing on June 28, 2011 for a copy of the Northwest Ordinance Day Proclamation, required pursuant to I.C. § 1-1-14-1. After failing to receive a response by July 8, 2011, you filed a formal complaint with this office.

In response to your formal complaint, Ms. Samuel provided that the Office received your request on July 12, 2011. On July 18, 2011, the Office provided you a copy of the proclamation responsive to your request.

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 Office is 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 Office's public records during regular business hours unless the 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 in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 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. I.C. § 5-14-3-9(b). 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. Here, there is a factual dispute as to when the Office was required to respond to your request. In your complaint, you claim that the Office was required to respond by July 8, 2011. In Ms. Samuel's response, she claims that the Office did not receive your request until July 12, 2011, thus a response was not required until July 19, 2011.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If the Office received your written request within three days of your sending it, it acted contrary to section 9 of the APRA. On the other hand, if the Office received your request on July 12, 2011, then the Office fulfilled its obligations under the APRA. That being said, I trust that the Office's July 18, 2011 response to your request was in satisfaction of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Office received your request within three days of your sending it, the Office violated the APRA. If, however, the Office received your request on July 12, 2011, the Office did not violate the APRA. As the Office has now produced all responsive records, it has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Anita Samuel