



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 27, 2015

Mr. William R. Groth, Esq.
429 E. Vermont St., Suite 200
Indianapolis, IN 46202

Re: Formal Complaint 15-FC-133; Alleged Violation of the Access to Public Records Act by the Office of Governor Mike Pence

Dear Mr. Groth,

This advisory opinion is in response to your formal complaint, alleging Mr. Christopher Anderson, Assistant General Counsel to Governor Pence, violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* On April 10, 2015, the Governor’s Office responded to your complaint via counsel, Mr. Christopher Anderson, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 15, 2015.

BACKGROUND

Your complaint dated April 7, 2015, alleges the Governor’s Office violated the Access to Public Records Act by improperly redacting public records.

On December 10, 2014, you made APRA requests to the Governor’s Office. You received the records on February 18, March 11, and March 12, 2015. However, you contend these records were improperly redacted.

Counsel for the Office of the Governor argues the redactions were made pursuant to exceptions to disclosure related to attorney work product and deliberative materials.

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 Ind. Code § 5-14-3-1. The Governor’s Office is a public agency for the purposes of the

APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's public records during regular business hours, unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

You have taken exception, generally, to the redacted version of the public records provided to you. I have reviewed the version of the records you submitted with your complaint, but have not been made privy to an un-redacted version. Unless specifically asked, this Office does not review public records *in camera* to determine the propriety of redactions. A value judgment, as to whether a redaction is proper, is better left for a Trier of fact. The occasions when this Office has done so, have been in a non-adversarial situation outside the formal complaint process.

The Governor's Office has provided a proper response, under Ind. Code § 5-14-3-9(d), as to why parts of the document were redacted. Pursuant to Ind. Code §§ 5-14-3-4(b)(2) and (6), the materials redacted may contain attorney work product and deliberative materials between inter-agency personnel and its designated contractor. Additionally, under Ind. Code § 34-46-3-1, the records may have been excluded because they include attorney-client communication. The redaction of legal invoices for this purpose is not unusual and has been addressed as appropriate in several prior Public Access Counselor Opinions.

Pursuant to Ind. Code § 5-14-3-6, redactions should be made with precision so non-disclosable records are separated from disclosable material. The redactions made to the records you have presented do not appear on their face to be overly redacted, relative to other attorney invoices this Office has seen.

CONCLUSION

For the foregoing reasons, it is the opinion of the Public Access Counselor the Governor's Office did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Christopher Anderson, Esq.