



STATE OF INDIANA

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September 1, 2016

John H. Brooke
112 East Gilbert Street
Muncie, Indiana 47305

Re: Formal Complaint 16-FC-182; Alleged Violation of the Access to Public Records Act by the Delaware County Emergency Communications Center Executive Board

Dear Mr. Brooke:

This advisory opinion is in response to your formal complaint alleging the Delaware County Emergency Communications Center Executive Board ("Board") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Director of the 911 Emergency Communication Center, Joseph Winkle, received your initial request and has responded to your complaint. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 2, 2016.

BACKGROUND

Your complaint dated August 2, 2016, alleges the Delaware County Emergency Communications Center Executive Board violated the Access to Public Records Act by failing to respond to your request.

On June 15, you submitted a request for all Board minutes from January 2012 to the present. This letter was sent to Mr. Winkle. The letter also noted that the secretary of the board would be the proper recipient of the request, but you were unaware of the name of this individual and asked that your request be submitted to the proper individual.

In a special meeting held by the Delaware County Commissioners on July 19, your request was acknowledged by Mr. Winkle. He stated that your request was forwarded to Mr. Phil Peckinpaugh, the secretary of the Board. As of the date of your complaint, you received none of the requested materials.

On August 3, the Director of the 911 Emergency Communication Center responded, stating that he had passed the request on to Mr. Peckinpaugh. Mr. Winkle notes that in a recent conversation held with Mr. Peckinpaugh on August 2, he inquired into the status of your request. Mr. Peckinpaugh responded that he was on vacation at the time your request was received and he simply forgot to gather the information that you requested.

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 Indiana Code § 5-14-3-1*. The State of Indiana, State Board of Education 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 Board’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

In this instance, you did not receive any acknowledgment until over a month after your request was submitted and the acknowledgment did not come from the individual responsible for completing the request, but from Mr. Winkle. It is important to note that this complaint improperly identifies Mr. Winkle as the officer responsible for the denial of your request. The name of Mr. Peckinpaugh, the proper individual to whom your request had been forwarded, was provided to you by Mr. Winkle in the Delaware County Commissioner’s meeting. It appears that your request was unintentionally forgotten after it was received by Mr. Peckinpaugh. This amounts to an administrative error. Without more, an administrative error is not justification for denial of access. Procedures should be in place to ensure a record request is not forgotten.

CONCLUSION

Based on for forgoing, it is the opinion of the Public Access Counselor the Delaware County Emergency Communications Center Executive Board violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Joe Winkle