



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 20, 2016

Ms. Roberta A. Kaplan, Esq.
1285 Avenue of the Americas
New York, New York 10019

Re: Formal Complaint 16-FC-194; Alleged Violation of the Access to Public Records Act by the Office of the Governor

Dear Ms. Kaplan:

This advisory opinion is in response to your formal complaint alleging the Office of the Indiana Governor (“Governor”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The Governor has responded via Mr. Mark Ahearn, Esq. 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 9, 2016.

BACKGROUND

Your complaint dated August 8, 2016, alleges the Office of the Governor failed to acknowledge a public records request submitted on or about July 19, 2016. On or about July 19, 2016, you submitted a public records request dated July 18, 2016 to the Office of the Governor seeking various correspondence and communication between Governor Mike Pence and several entities. The Governor’s Office responded by conceding the acknowledgement of your request failed to deliver due to transposing two of the numbers on your address. The mistake was corrected on August 8, 2016.

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 Office of the Indiana Governor is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Governor’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 submitted 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.

It appears as if the Governor's Office had every intention of responding to your public records request, but due to an administrative error, this acknowledgement was delayed. Based upon the information provided, it appears as if this was simply a clerical error and there is no indication the Governor's Office was attempting to subvert the public access laws or dodge compliance.

In any case, your request appears to lack reasonable particularity. Under the Access to Public Records Act, a requestor must identify the document(s) sought with a degree of specificity. *See Indiana Code § 5-14-3-3*. In regard to email, the Indiana Court of Appeals has defined specificity in *Anderson v. Huntington County Bd. of Com'rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The Court agreed with former Public Access Counselor Joseph B. Hoage that a reasonably particular email request names a specific sender, recipient, and date frame. I would also contend a specific request would include one or more key words for a search parameter.

It does not appear as if your public records request contains all of these elements. To its credit, the Governor's Office did not deny your request outright, but invited you to narrow your search to meet the above criteria. Upon clarification, the Office of the Governor may be able to satisfy your inquiry.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Mark Ahearn, Esq.