



STATE OF INDIANA

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February 21, 2013

Ms. Christiana L. Schmitz
400 Renaissance Center
Detroit, Michigan 48243

Re: Formal Complaint 13-FC-20; Alleged Violation of the Access to Public Records Act by the Indiana Public Retirement System

Dear Ms. Schmitz:

This advisory opinion is in response to your formal complaint alleging the Indiana Public Retirement System ("IPRS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jeff Hutson, Chief Communications Officer, responded on behalf of the IPRS. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that on November 28, 2012, you submitted a written request for public records to the IPRS for records related to a April 2012 Request for Proposals. The IPRS acknowledged in writing the receipt of your request on November 29, 2012. On December 17, 2012, you inquired as to the status of your request. On December 18, 2012, the IPRS advised that your request would be expedited and the information would be provided as soon as possible. On January 10, 2013, you again inquired as to the status of your request. The IPRS responded on January 11, 2013 and advised that it would check on the status of your request. On January 22, 2013, you again inquired as to the status of your request. As of January 24, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records in response to the request that was submitted.

In response to your formal complaint, Mr. Hutson advised that the IPRS received your written request on November 28, 2012. While the agency regrets your dissatisfaction in the time taken to produce the records that were responsive to your request, the IPRS believes it responded in a reasonable period of time, given the quantity of documents involved with your request and in context with the other responsibilities of IPRS staff that were assigned to collect and review the records. A timeline of the agency's response provides that:

- On November 29, 2012, IPRS's initial response to your request was provided in less than 24 hours;
- Agency staff were notified and work began on a complete response to the request less than 24 hours after the request's receipt;
- On December 18, 2012, in responding to your inquiry regarding the status of your request, IPRS noted that, while several APRA requests were received prior, action had been taken to expedite your request;
- On December 18, 2013, the process began to review approximately 7,000 records that were responsive to your request. The review process included staff from IPRS Procurements, Legal, Investment, and Communications Departments;
- On January 31, 2013, internal review of the records was completed and the agency began assembling the records for electronic transfer;
- On February 1, 2013, IPRS transmitted all records responsive to your request via email.

Mr. Hutson advised that the agency's team responded as quickly as possible to your request given the large quantity of records sought and the subsequent scale of the review process. Mr. Hutson noted over the past seven years, IPRS has received approximately 140 APRA requests with no complaints filed with the Public Access Counselor. Given a four-fold increase in the number of requests received annually in recent years, IPRS staff is evaluating how to improve the communication process with those submitting inquiries regarding the status of their pending requests.

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* I.C. § 5-14-3-1. The IPRS is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the IPRS's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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. *See* 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, the IPRS acknowledged in writing the receipt of your written request for records one day after its receipt. As such, it is my opinion that the IPRS complied with section 9(b) of the APRA in responding to your request.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of

section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* 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. *See* 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. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, you submitted your written request for records on November 28, 2012. The IPRS responded to the request within one day of the receipt of the request. On December 17, 2012, you submitted an inquiry as to the status of your request, to which the agency responded on December 18, 2012 and advised that your request was being expedited. On January 10, 2013, you submitted a further inquiry to which Mr. Hutson responded on January 11, 2013. On January 22, 2013, you submitted a further inquiry to which having not received a response by January 24, 2013, you filed a formal complaint with our office. The IPRS advised that it collected approximately 7,000 records that were responsive to your request. As noted *supra*, the IPRS was required under the APRA to review all records prior to disclosure. Mr. Hutson noted that the review required the coordinated actions of the agency's procurement, legal, investment, and communications departments. In light of the number of records that were responsive to your request, the IPRS's requirement to review all records prior to disclosure, the agency's ongoing responsibility to maintain its normal duties and functions, which include responding to other request for records that have been submitted, and the fact that all records were produced on February 1, 2013, it is my opinion that the IPRS acted in compliance with section 3(b) of the APRA by providing all records responsive to your request in a reasonable period of time.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the IPRS complied with the requirements of the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Jeff Hutson