



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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December 23, 2015

Mr. Hugh Burns
8128 Hurricane Street
Elizabeth, Indiana 47117

Re: Formal Complaint 15-FC-312; Alleged Violation of the Access to Public Records Act by the State of Indiana, Indiana Department of Transportation

Dear Mr. Burns:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Indiana Department of Transportation ("INDOT") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* INDOT has responded to your complaint via Counsel Mr. Mark Hawkins, 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 November 19, 2015.

BACKGROUND

Your complaint dated November 19, 2015 alleges INDOT violated the Access to Public Records Act by failing to provide the records you requested within a reasonable period of time.

On September 21, 2015, you requested records from INDOT related to ditch erosion in the Town of Elizabeth Well Field. On September 29, 2015 INDOT acknowledged your request.

On December 7, 2015 INDOT responded. INDOT acknowledges it was delayed in providing records to you; however, this was merely an oversight on the part of INDOT rather than an attempt to withhold documents.

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.



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Code § 5-14-3-1. The State of Indiana, Indiana Department of Transportation 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 INDOT's disclosable 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).

INDOT acknowledges it was untimely in providing records; however, this was apparently a result of the numerous amounts of communications necessary to compile the records requests. While this does not appear to be an intentional violation of the APRA, a failure to provide records due to error is a violation regardless of intent. It appears as if INDOT has taken steps to rectify this problem and has since provided you with the records you requested.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the State of Indiana, Indiana Department of Transportation has violated the Access to Public Records Act, although it has made a good faith effort to rectify the issue and has provided documents.

Regards,

A handwritten signature in black ink, appearing to be "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Mark Hawkins, Esq.