



STATE OF INDIANA

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September 24, 2014

Mr. Abdul-Hakim Shabazz
40 Monument Circle
Indianapolis, IN 46204

Re: Formal Complaint 14-FC-186; Alleged Violation of the Access to Public Records Act by the Indiana Department of Education

Dear Mr. Shabazz,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Education ("IDOE") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The IDOE has responded to your complaint via Staff Attorney, Kelly M. Bauder. Her 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 August 21, 2014.

BACKGROUND

Your complaint, dated August 20, 2014, alleges the Indiana Department of Education violated the Access to Public Records Act by delaying the production of records responsive to your request.

On August 5, 2013, you submitted a request for public records access to the IDOE seeking email correspondence from several named senders and recipients. You included a timeframe and search terms. The IDOE responded on August 5, 2013 and advised you they would begin to gather the requested documents. As of the date of your formal complaint, you have not received any other correspondence or documentation from the IDOE.

The IDOE responded citing staff turnover, a backlog in public records requests, and the labor intensive process of gathering the information as justification for delaying production of documents for over a year.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 Indiana Department 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 IDOE’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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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 Ind. 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.

A similar situation was addressed by this Office in *Opinion of the Public Access Counselor 14-FC-15*. In that particular Opinion, a requestor had waited five months for any documents from the IDOE. At the time, there were 50-60 pending requests for similar information. Given that August 2013 news cycle had generated a substantial amount of interest in the subject matter underlying both yours and the previous request, I found at the time five months was not unreasonable under the circumstances.

Despite the significant interest in these emails and others, you have waited for over a year. It is my determination this timeframe well exceeds a reasonable time for producing documents. I am familiar with this situation, the pending backlog of requests and the IDOE’s staff turnover. I have no doubt what they are saying is factually accurate. However, your access has been harmed by their delay.

By this point, the IDOE should be able to process these requests with relative ease. There may be some variation from request to request, but not so much so it takes a year to generate a reply. The Department has not alleged any other exception nor has it worked with you to narrow your request. Furthermore, it has been longstanding advice from this Office to make best efforts for agencies to be in semi-regular communication with a requestor to advise them on the progress of large document searches. This tends to mitigate these frustrations; however, this was not done in this case to my knowledge.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Indiana Department of Education has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kelly M. Bauder, Esq.