



# STATE OF INDIANA

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October 29, 2014

Mr. Warren A. Auxier  
P.O. Box 215  
Hanover, IN 47243

*Re: Formal Complaint 14-FC-228; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Department of Transportation*

Dear Mr. Auxier,

This advisory opinion is in response to your formal complaint alleging the 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 Mr. Mark V. Hawkins, Esq. 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 October 2, 2014.

## BACKGROUND

Your formal complaint alleges the Indiana Department of Transportation violated the Access to Public Records act by not producing records in a reasonable time pursuant to Ind. Code § 5-14-3-3 .

On or about July 21, 2014 you submitted a public records request to INDOT seeking the following information:

All the documentation INDOT compiled and/or relied on to support their position that the portions of S.R. 56, S.R. 256, and U.S. 421 that will be transferred to the City of Madison in accordance with the "ROAD TRANSFERMEMORANDUM OF AGREEMENT BETWEEN THE INDIANA DEPARTMENT OF TRANSPORATION, JEFFERSON COUNTY, INDIANA AND THE CITY OF MADISON, INDIANA" will no longer meet the criteria established in IC 8-23-4-2 for a highway in the state system.

INDOT provided a timely acknowledgement; however, you take exception with the length of time taken by the agency to provide you with records.

INDOT responded to your complaint by arguing the agency made best efforts to retrieve the information sought, but believed your request was not reasonably particular. Despite this, INDOT searched for and produced some of the records and did not outright deny you access. The delay, in their opinion, was due to the size and complexity of the request.

## **DISCUSSION**

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. Code § 5-14-3-1. The 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 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).

The APRA does not specify a time for production or inspection of responsive records, but this office has stated records must be produced within a reasonable time of the request. Often, this Office is asked to make a determination as to the reasonableness of the time for production of records by a public agency. What is a "reasonable" time period under one circumstance may not be considered reasonable under other conditions. Production need not materially interfere with the regular discharge of the functions and duties of the public agency. Ind. Code § 5-14-3-7(a). The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request.

The information provided indicates the fulfillment of the request will necessitate time beyond the usual request. This Office has routinely advised public agencies to take a number of steps to mitigate complaints. The first is to be in semi-regular contact with the requestor. This fosters a cooperative spirit on the part of the agency to be actively engaged with the constituent even when the search is taking a significant amount of time. The second is to produce records as they become available. Instead of waiting until they are all compiled, agencies are advised to release them on a piecemeal basis.

While INDOT communicated with you initially, the lines of communication were dropped around September 2014. It is unclear if this is due to workload, staffing issues or a backlog of public records request. INDOT does not necessarily indicate why this took place. In the future, I encourage the agency to continue semi-regular communication.

INDOT may not have released any records to you because they determined your request to not meet a standard of specificity. A request for inspection and copying must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). It has been a

long-standing edict from this Office, if a public agency receives a request which is not stated with reasonable particularity, the public agency should inform the requester that the request cannot be fulfilled as stated, and seek additional information or clarification from the requester. Although this is not in the APRA or any other authority, it is certainly best practice and in alignment with the spirit of the law.

I am not familiar enough with INDOT's record keeping system or the types of records in the request to make a conclusive determination. My first impression is you have identified a type of record which could be search for and retrieved, but it may indeed lack some definition. This standard is evident in *Anderson v. Huntington County Board of Commissioners*, 983 N.E.2d 613 (Ind. App. 2013) as well *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012). In any event, INDOT followed best practice by reaching out and asking you to clarify your request instead of denying the request outright.

I decline to state a conclusive determination INDOT violated the law. After conversations with INDOT staff, I am comfortable with the direction of their public records policies and efforts to be more expedient in the future. As always, it is my expectation they continue to fulfill your request employing efficiency and timeliness.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Mark V. Hawkins, Esq.