



# STATE OF INDIANA

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October 29, 2014

Ms. Linda J. Clark  
19620 County Road 16  
Bristol, IN 46507

*Re: Formal Complaint 14-FC-233; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Department of Environmental Management*

Dear Ms. Clark,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Environmental Management ("IDEM") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IDEM has not responded to our request despite an invitation to do so on October 8, 2014. 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 3, 2014.

## BACKGROUND

On or about September 15, 2014, you submitted a public records request to the Indiana Department of Environmental Management seeking information regarding permit applications on named property. IDEM acknowledged your request on the same day. As of the date of the filing of your complaint, on October 3, 2014, you had not received a follow-up response or any production of records.

## 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 Environmental Management 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 IDEM'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.

In a previous *Advisory Opinion (14-FC-93)*, I found IDEM had acted contrary to the Access to Public Records Act by delaying production of records pursuant to your request. The time period for that particular delay was over one month. In this case, only 13 business days had elapsed between the submission of your request (and the acknowledgement of your request by IDEM) and the filing of your formal complaint. I've reviewed your request and it appears to be relatively complex in nature and it very well may take IDEM a number of weeks to process and produce the documents.

It is my expectation (and the public's) that access requests be handled in an expeditious and efficient manner. There is no expectation, however, to immediate access. I have stated in prior opinions that a "reasonable time" to produce records depends on several factors, including, but not limited to, size and complexity of the request, size of the agency, and any other circumstantial issues affecting an agency's ability to produce.

When an agency knows records may take some time to retrieve, review and release, I have stated the best practice would be for the agency to be in semi-regular contact with the requestor and produce the records as they become available. I am not prepared, however, to say 13 business days is too long a time for an agency to respond after acknowledgement of your request given the nature of the information sought. Simply put, the filing of your complaint may have been a bit premature.

Having not received a response from IDEM, I am not aware whether they have released any records to you yet. It is my expectation they do so as soon as possible.

## **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Department of Environmental Management has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt  
Public Access Counselor