



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

HOOSIER ENVIRONMENTAL COUNCIL,)	
)	
Complainant)	
)	
v.)	17-FC-109
)	
INDIANA DEPARTMENT OF NATURAL RESOURCES)	
)	
Respondent)	

**ADVISORY OPINION
June 26, 2017**

This advisory opinion is in response to the formal complaint alleging the Indiana Department of Natural Resources (DNR) violated Indiana Code § 5-14-3-1, the Access to Public Records Act (APRA). On May 31, 2017, the DNR responded to the complaint via General Counsel Samantha DeWester. The agency’s response is enclosed for review. In accordance with Indiana Code section 5-14-5-10, I issue the following advisory opinion to the formal complaint received by the Office of the Public Access Counselor on May 9, 2017.

BACKGROUND

The Complainant alleges the Indiana Department of Natural Resources (DNR) violated the APRA by inappropriately redacting or withholding information under the statute’s deliberative materials exception.

On February 27, 2017, the Hoosier Environmental Council (“HEC”) requested any reports, spreadsheets, memorandums, inventory, or other documents of physical assets on DNR-owned properties. This asset inventory is mandated by 2016 legislation. In response, on March 17, 2017, the DNR produced some documentation and—relying on Indiana Code section 5-14-3-4(b)(6)—withheld some records as deliberative materials. The HEC then requested the 2016 asset inventory and all other responsive



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records, specifying which records were withheld. On April 12, 2017, DNR deferred to its original public records production response as the last word on the matter.

Although some of the information requested by the HEC was withheld under APRA's deliberative materials exception, the DNR contends that the agency fulfilled the Complainant's request for records on March 17, 2017, in manner consistent with the APRA. Furthermore, the DNR contends the deadline to file a formal complaint had passed when the HEC filed its complaint on May 9, 2017. Toward that end, the DNR has asked for the complaint to be dismissed.

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." Indiana Code § 5-14-3-1. The Indiana Department of Natural Resources (DNR) is a public agency for the purposes of the APRA. *See* Indiana Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the DNR's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Indiana Code § 5-14-3-3(a).

As to the issue of timeliness, it is reasonable the Hoosier Environmental Council (HEC) did not consider any records to be denied until the DNR's response was issued on April 12, 2017. Since the complaint was filed with this office on or about May 9, I will accept the HEC's complaint as timely.

Based on the information provided, it is unclear what materials were actually provided to the Complainant. It does not appear any documents were refused to be "confirmed or denied." The exhibits indicate an attachment with the public records, but its contents were not provided. Therefore, I have no way of knowing what kinds of materials were released and what was withheld. Although the original response of production referenced deliberative materials as being withheld, the DNR did not expound with a privilege log, nor must it under the APRA.

Without reviewing the documents *in camera*, this Office cannot make a value judgment as to whether redaction was appropriate. While this is a service that has been performed from time to time at the request of agencies and requesters alike, this Office does not, on a regular basis, proactively seek out documents to review to determine if they have been properly redacted. This is a determination best left for the judiciary as it is often a fact-based conclusion necessitating testimony and authentication. After review of the responses by the agency, however, it appears as if the DNR met its obligation as to its procedural response.



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CONCLUSION

Based on the foregoing and the information provided, it is the Opinion of the Public Access Counselor the Indiana Department of Natural Resources has not violated the Access to Public Records Act.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LH Britt", written over a light gray rectangular background.

Public Access Counselor

Cc: Samantha E. De Wester