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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MATTHEW R. KASPER,  
*Complainant,*

v.

OFFICE OF THE GOVERNOR,  
*Respondent.*

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Formal Complaint No.  
19-FC-118

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Office of the Governor violated the Access to Public Records Act.<sup>1</sup> General Counsel Joseph R. Heerens filed a response on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 28, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1, to -10.

## BACKGROUND

This case involves a dispute over whether the Office of the Governor (“Governor’s Office”) fulfilled a request for public records within a reasonable time as required by the Access to Public Records Act.

On April 16, 2019, Matthew R. Kasper (“Complainant”) filed a public records request with the Governor’s Office seeking the following:

1. All communication of Governor Eric Holcomb, Chief of Staff Earl Goode, Deputy Chief of Staff Cris Johnston, Deputy Chief of Staff Allison Karns, Debbie Hohlt, specifically pertaining to the Northern Indiana Public Service Company rate case and integrated resource plan, and senate Bill 472. Search terms that can be used in this request are limited to “Vectren”, “CenterPoint”, “NiSource”, “NIPSCO”, “Wheatfield”, “Michigan City”, “Schahfer”, “Chancellor”, “Hallaway”, “White Stallion”, “hhqventures”, “IURC”, “Utility Regulatory Commission”, “coal”, “eop.gov”, “Soliday”.
2. Phone logs of Governor Eric Holcomb between March 25, 2019 and April 15, 2019
3. Calendars of Governor Eric Holcomb, Chief of Staff Earl Goode, Deputy Chief of Staff Cris Johnston, Deputy Chief of Staff Allison Karns, Debbie Hohlt for March 2019 and April 2019.

On the same day, press secretary Rachel Hoffmeyer responded to Kasper acknowledging the office received his request.

On April 19, 2019, Kasper notified the Governor’s Office that he narrowed the relevant timeframe for part one of the request to March 1, 2019, through the processing date of

the request. The Governor's Office acknowledged Kasper's update on April 22, 2019.

Kasper contends that he spent six months following up on the status of his request after he received the second acknowledgement.

Deputy General Counsel Cynthia Carrasco responded to Kasper's requests for status updates. Most recently, on October 21, 2019, Carrasco informed Kasper that she would be contact him with another update in a week.

On October 28, 2019, Kasper filed a formal complaint with this office.

In essence, Kasper argues that the Governor's Office failed to provide public records within a reasonable time as contemplated by APRA because six months went by since his initial request.

On December 2, 2019, the Governor's Office filed an answer to Kasper's complaint with this office. As an initial matter, General Counsel Joseph R. Heerens notes that the Governor's Office fulfilled the entirety of Kasper's request while the complaint was pending.

The office goes on to detail how Kasper's actually filed two separate records requests with the Governor's Office over the span of a few days. The second request, which Kasper filed on April 19, 2019, was fulfilled on May 29, 2019 by the Governor's Office. Heerens explains that the office fulfilled the second request in less time compared to the April 16, 2019 complaint because it "simple, straight forward, and did not involve multiple components."

Heerens also notes that due to a high volume of records requests, limited staff resources, and wrap-up of the legislative session, the Governor’s Office was not able to initiate a search for records responsive to Kasper’s request until June 2019. Along with the delayed start, the six month timeframe to fulfill the request was also the result of the search producing a large number of responsive records. Following the search, the staff then had to review 1,240 pages of documents to ensure that the office did not release confidential or nondisclosable materials.

## ANALYSIS

### 1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (“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.” *Id.* The Office of the Governor is a public agency for the purposes of APRA; and thus, is subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the Governor’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

## 2. Reasonable Time

A requester should expect to receive production of documents within a reasonable time after an agency accepts a request. *See* Ind. Code § 5-14-3-3(b). This could entail a partial or complete fulfillment of the request, depending on the circumstances.

It appears in this case there were two simultaneous requests, one that was fulfilled within 40 days and one—the subject of this complaint—that was fulfilled shortly after the filing of this formal complaint.

“Reasonable time” is not defined explicitly in statute or case law but is simply defined by this office as practical efficiency. Some realities which factor in to the equation are the size of the public agency and resources available to devote to responding to requests; the size of the request itself in terms of both complexity and magnitude; the number of other pending requests; and other outlying situations affecting the response on a case-by-case basis. In relation to some high profile officials, the news cycle will even factor into any delays. *See Opinion of the Public Access Counselor*, 14-FC-15 (2014).

The request in question does appear to be significantly complex and voluminous. While not necessarily so on its face, certainly in terms of the material it generated – well over 1200 pages, all having been produced.

Furthermore, the 2019 legislative session, which included the biennial State budget, was concluding during the time of the request. Additionally, this office is aware of other high-profile matters in the arena of public discussion during the

time of the submission inviting multiple concurrent public records requests. These also would presumably compete for the attention of the Governor's Office.

All of these elements in the aggregate can often lead to a delay in the production of documents. While six months is a long time to wait for documents, it is not unheard of. It is true most records requests can be completed in a much shorter amount of time, however, based on the totality of the circumstances, this office cannot fault the Governor's Office in this instance.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Office of the Governor did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor