



STATE OF INDIANA

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May 6, 2009

Nancy Garbrecht
6170 Joliet Road, Suite 200
Countryside, Illinois 60525

Re: Formal Complaint 09-FC-101; Alleged Violation of the Access to Public Records Act by the Jasper County Highway Department

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging the Jasper County Highway Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department's response was untimely under the APRA but the Department did not otherwise violate the APRA.

BACKGROUND

You allege that you sent by facsimile transmission to the Department a request for access to records. The request was dated April 3, 2009. Specifically, you requested records related to ditch work projects from 2008 and 2009. You filed the present complaint on April 15, alleging you had received no response from the Department. You requested priority status for the complaint but did not allege any of the reasons provided in 62 IAC 1-1-3 for priority status, so priority status was not granted.

The Department responded to the complaint by providing to my office a copy of a letter dated April 17 which Gail Ackerman of the Department sent to you. In the letter, Ms. Ackerman explains why no records exist responsive to your request. Ms. Ackerman directs you to the Jasper County Surveyor for further information.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public

records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile transmission and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you sent the request to the Department on April 3. If the Department received the request on April 3 but did not respond to you within seven days of receipt of the request, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b). The Department now indicates it maintains no records responsive to your request. Since the Department maintains no records responsive to the request, the Department has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department's response was untimely under the APRA but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Gail Ackerman, Jasper County Highway Department