



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 27, 2009

Bruce Brightwell
1212 State Street
New Albany, Indiana 47150

Re: Formal Complaint 09-FC-115; Alleged Violation of the Access to Public Records Act by the Indiana State Department of Toxicology

Dear Mr. Brightwell:

This advisory opinion is in response to your formal complaint alleging the Indiana State Department of Toxicology ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not producing the records you requested in a reasonable period of time. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

BACKGROUND

You filed two complaints with this office on May 5, 2009. Because the complaints were similar in nature and filed against the same agency, the complaints were consolidated and are both addressed in this advisory opinion. You allege that you requested copies of records from the Department and the Department responded, by letter dated March 14 for one request and March 18 for the other request. In the response, the Department indicated the records would be made available to you. You allege that as of the date of your complaints, you had not received the records.

The Department responded to your complaint by letter dated May 6 from Anna Hileman. Ms. Hileman indicated the records had been copied and the accompanying affidavit prepared. She further indicated the Director of the Department would return to the office on May 11 and would execute the affidavit at that time. The Department contends the initial response was made within the time required by statute. The Department further explains that the current Director has assumed the duties of another person in addition to discharging his own duties. The Director performs the task of reviewing and preparing all affidavits for public records requests in addition to regular daily activities and numerous court appearances on behalf of the Department.

The Department subsequently sent confirmation to my office that the records were sent to you on May 14.

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 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). If the request is made in person and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

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). Section 7 does not, however, operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). My predecessors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, your initial requests were made in March 2009. Assuming the Department's March 14 and March 18 responses were sent within seven days of receipt of the requests, the Department's responses were timely. The time between the Department's initial response to you and ultimate production of records was approximately two months. The Department contends that the Director, who is frequently out of the office for court appearances and who has a number of other duties, is the person responsible for reviewing and preparing the affidavit for each request for access to records. While nothing in the APRA requires an agency to provide an affidavit with each production of records, nothing prevents the agency from having one person in the agency responsible for executing such affidavits.

It is my opinion the Department has demonstrated it worked to produce the documents you requested in a reasonable amount of time. The Department worked to gather and copy the

records to which you requested access. Further, the Department needed to review the records to redact nondisclosable information and ensure the appropriate records were being provided. And pursuant to the APRA, the Department must, when producing records pursuant to a request, 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). I do not believe the Department took an unreasonable amount of time to collect, review and reproduce the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Indiana State Department of Toxicology has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Anna Hileman, Indiana State Department of Toxicology