



STATE OF INDIANA

MICHAEL PENCE, Governor

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Via email transmission

June 14, 2016

Mr. William Joseph Jenner

Re: Informal Inquiry 16-INF-16; Complaint against the Switzerland County Board of Commissioners

Dear Mr. Jenner:

This is in response to your informal inquiry regarding whether the Switzerland County Board of Commissioners ("Board") violated the Access to Public Records Act. The Board has responded via Mr. Wilmer Goering, Esq. His response is enclosed for your review.

BACKGROUND

You seek a determination as to whether the Board violated the APRA. On April 12, 2016, you requested eight (8) different sets of documents related to Evans Hill Road and your clients. One of your requests was for engineering reports. This request was denied as privileged because it was prepared in anticipation of litigation. You contend this denial is improper because litigation had not been threatened at the time of denial. You also note you have not received all of the documents you requested.

ANALYSIS

On June 2, 2016 the Board responded. The Board contends its denial was proper under Indiana Code § 5-14-3-4(a)(8) because Indiana Trial Rule 26(B)(4)(b) limits an opposing party's ability to obtain the records prepared in anticipation of litigation.

The Board acknowledges a Tort Claim Notice was submitted on behalf of your clients on May 5, 2016. However, the Board also notes your clients submitted a Claim notice on March 21, 2016. Based on this earlier claim notice, the Board believed litigation was being threatened and contacted an engineer to assess the situation. It is reasonable for the Board to believe litigation is threatened in response to your clients' prior notice and therefore the Board properly withheld records under Trial Rule 26(B)(4)(b).

You also contend the Board has not provided you with all records responsive to your request. I note your request was extremely broad, to the point of lacking reasonable particularity. Under Indiana Code § 5-14-3-3(a)(1), "a request for inspection or copying must identify with reasonable particularity the record being

requested.” Reasonable particularity is not defined under the APRA. If a public agency cannot determine what records to seek then your request is determined to have lack of reasonable particularity.

If the Board failed to provide you with all of the documents you requested, this is likely because your request lacked reasonable particularity and the Board could not determine the scope of your request. My suggestion to you is to refine your requests. Requests for “Any plans” or “All meeting minutes” could result in thousands of pages of records. It is not so onerous on a requestor to require a timeframe for the records requested to ensure you do not receive documents from years earlier which are not needed, but are still responsive to your request.

Finally, you have not stated how you are aware additional documents exist responsive to your request. The Board has stated it has provided you with all responsive records, except for those deemed confidential under the APRA. This office is not a finder of fact and cannot determine whether additional records exist. If they do, the Board must provide them.

Please do not hesitate to contact me with any questions.

Best regards,

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

Luke H. Britt
Public Access Counselor