



STATE OF INDIANA

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June 15, 2011

Mr. Zachary P. Elliot
Citizens Action Coalition of Indiana
603 East Washington Street, Suite 502
Indianapolis, IN 46204

Re: Formal Complaint 11-FC-118; Alleged Violation of the Access to Public Records Act by the Indiana Department of Transportation

Dear Mr. Elliot:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Transportation (“INDOT”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* INDOT sent its response to your complaint to you and my office via email on May 19, 2011.

BACKGROUND

In your complaint on behalf of the Citizens Action Coalition of Indiana (“CAC”), you state that on February 4, 2011, sent a records request via email to INDOT. The request sought emails, other correspondence, and documents transmitted between various parties between January 1, 2010, and June 30, 2010. INDOT sent CAC an acknowledgment on February 7, 2011. On February 18th, INDOT Program Director for Public Records Amy Miller wrote to you to inform you that INDOT anticipated having to gather a large number of records and was not sure of a delivery date. On April 28th, Ms. Miller wrote to you again and noted that INDOT was still gathering responsive records. On May 6th, INDOT issued a denial letter to the CAC stating that it did not have any records pertaining to the February 4th request. However, CAC later obtained from the State Ethics Commission emails that fall within the realm of the February 4th request to INDOT. You state that CAC “seeks resolution of this matter, and urges the release of the requested information in an expedited manner, as we consider the time period of 3 months which has passed since the original request as a reasonable time to produce responsive records.”

INDOT Staff Attorney Gabe Paul wrote in his May 19th letter to you that INDOT’s May 6th denial letter was “incorrect and was an administrative oversight.” Mr. Paul apologized for the mistake and noted that INDOT was continuing to work on

assembling and reviewing responsive emails. It is my understanding that Ms. Miller hand-delivered all responsive emails to your office last Friday, June 10th.

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. INDOT is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy INDOT’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

INDOT acknowledges that it made a mistake by informing you that it had no records responsive to your February 4th request. For obvious reasons, INDOT should have provided you with the requested records rather than issuing its May 6th denial stating that it did not maintain responsive records. It is unclear, however, what provision of the APRA specifically addresses such an oversight. Agencies are prohibited from “deny[ing] or interfer[ing] with the exercise of the right [to inspect and copy public records] stated in subsection (a)” of Ind. Code § 5-14-3-3, so perhaps an agency’s failure to locate responsive records would serve as an undue interference or *de facto* denial. In any event, it is my understanding that INDOT has now produced all responsive records to you. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that INDOT should have released all responsive records to you in response to your February 4th request rather than denying the request on the basis that INDOT maintained no responsive records. INDOT acknowledged and apologized for the error and has now released all responsive records to you.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Gabe Paul