



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

February 9, 2015

Mr. Kenneth W. McKelvey
New Castle Correctional Facility
100 Van Nuys Rd.
New Castle, IN 47362

Re: Formal Complaint 15-FC-09; Alleged Violation of the Access to Public Records Act by the Indiana Housing and Community Development Authority

Dear Mr. McKelvey,

This advisory opinion is in response to your formal complaint alleging the Indiana Housing and Community Development Authority (“IHCDA”), violated the Access to Public Records Act (“APRA”) Ind. Code § 5-14-3-1 *et. seq.* IHCDA has not taken advantage of the opportunity to respond to your complaint despite an invitation to do so on January 16, 2015. I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 12, 2015.

BACKGROUND

Your complaint dated January 2, 2015 alleges the Indiana Housing and Community Development Authority violated the Access to Public Records Act by failing to respond to your request in a timely manner.

On or about December 7, 2014, you submitted a public records request to the IHCDA seeking information related to various programs and grants. As of the date of your formal complaint, you had not received an acknowledgement of your request. The IHCDA has not responded to your formal complaint.

DISCUSSION

The public policy of the 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.” See Ind. Code § 5-14-3-1. The Indiana Housing and Community Development Authority is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1).

Accordingly, any person has the right to inspect and copy IHCDA's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

If the IHCDA received your complaint, they have violated the above provision of the Access to Public Records Act by not acknowledging receipt of your request within seven (7) days. Without the benefit of a response from the agency, I cannot conclude they did not receive it.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana Housing and Community Development Authority has violated the Access to Public Records Act by not acknowledging receipt of your public records request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor