



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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February 20, 2015

Ms. Kara Principe
6170 Joliet Road, Ste 200
Countryside, Illinois 60525

Re: Formal Complaint 15-FC-11; Alleged Violation of the Access to Public Records Act by the Elkhart County Highway Division

Dear Ms. Principe,

This advisory opinion is in response to your formal complaint alleging the Elkhart County Highway Division ("ECHD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The ECHD has responded via Mr. Craig M. Buche, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 15, 2015.

BACKGROUND

Your complaint dated January 15, 2014 alleges the Elkhart County Highway Division violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 5, 2014, you submitted to the ECHD a public records request seeking to inspect (among other records):

“a listing of all projects that have been completed pursuant to Elkhart County’s ‘Americans with Disabilities Act Transition Plan: Pedestrian Facilities in the Public Right-of-Way’ 2012, Attachment B.”

On December 12, 2014, the ECHD acknowledged the receipt of your request and denied your request. ECHD cited APRA as justification holding your original request did not “specify a document with reasonable particularity” and the ECHD did not have “lists as you describe[d] and are not required to prepare them.” On December 22, 2014, you reiterated your request to the ECHD with attachment specifying your request.

Subsequently, on December 23, 2014, the ECHD responded the ECHD does not have the listings you requested

On February 2, 2015, Craig M. Buche, Counsel for Elkhart County and the ECHD responded to your complaint. Counsel contends the ECHD has complied with the requirements of the APRA, which does not require public entities to create documents not in existence, only provide access to those in existence, citing previous *Opinion of the Public Access Counselor 08-FC-239*.

Additionally, counsel reiterated APRA's requirement for specificity when requesting documents. Because of a lack specific definition under the APRA, counsel holds that under the APRA, the term "specificity" should be given its plain meaning, citing *Opinion of the Public Access Counselor 08-FC-176*. Because the ECHD could not ascertain what records were sought, the request lacked specificity under the APRA. Counsel also notes in ECHD's response to your second request, ECHD specifically noted it did not maintain the listing you requested, as required by *Opinion of the Public Access Counselor 06-FC-192*.

ANALYSIS

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 Elkhart County Highway Division 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 the ECHD'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).

As noted in its response, the Public Access Counselor's Office has interpreted this provision to mean the public agency must be able to ascertain the records the requestor is seeking in order for the request to be made with reasonable particularity. See *Opinions of the Public Access Counselor 10-FC-57 and 08-FC-176*. If an agency needs clarification regarding a request, the agency should contact the requestor for more specific information. See *Opinion of the Public Access Counselor 02-FC-13*.

After reviewing your original request, it appears as if what you are asking for is relatively straight-forward; however, it does not identify a specific project. It may be true the information is not in one particular document or is summarized succinctly, but you identify the *type* of public records sought with an element of specificity. I have often held a requester does not need to identify a record with pinpoint accuracy, but must give the agency an idea of what it should be looking for. That being said, identification of a specific project is a necessity rather than a catch-all such as "a listing of all projects".

Similarly, if a 'listing' does not exist, a public agency is not required to create a list or any other document to satisfy a request. If you are able to identify a specific project and make a similar request, the ECHD would need to provide the responsive records.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Elkhart County Highway Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

Cc: Mr. Craig M. Buche, Esq.