



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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February 4, 2015

Ms. Annette Gross  
3469 Muirfield Way  
Carmel, Indiana 46032

*Re: Formal Complaint 15-FC-332; Alleged Violation of the Access to Public Records Act by the Office of the Governor*

Dear Ms. Gross:

This advisory opinion is in response to your formal complaint alleging the Office of the Governor ("Governor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Governor has responded to your complaint via Mr. Mark Ahearn, Esq., General Counsel. 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 December 29, 2015.

## **BACKGROUND**

Your complaint dated December 15, 2015 alleges the Office of the Governor violated the Access to Public Records Act by failing to provide the documents you requested within a reasonable time.

On or about October 28, 2015 you requested records related to an organization called "Real Alternatives." You are seeking any communications between the State of Indiana and Real Alternatives, as well as other records related to payments and providers.

On November 6, 2015, you received an acknowledgement from Mr. Shelly Triol, Communications Director for the Office of the Governor. She noted there were approximately four (4) other APRA requests before the Governor at that time and your public records request would be processed in the order in which it was received. You received no further communication from Ms. Triol or any other individual.

On January 15, 2016 the Governor's Office responded to your formal complaint. Mr. Ahearn on behalf of the Governor contends that a reasonable amount of time has not yet elapsed for fulfilling your request. He notes the Governor had four (4) other APRA requests pending, several of which resulted in voluminous amounts of records being discovered. Further, because the search of records is handled by the Office of Technology, searches of the Governor's records tend to be a time-intensive process.

Finally, because of the current legislative session, there have been further delays related to fulfilling your APRA request, which will likely amount of several hundred pages of documents.

### **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 Office of the Governor 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 Governor’s disclosable 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).

Ind. Code § 5-14-3-3(b), a request for public records must be fulfilled by a public agency within a reasonable time. The APRA does not specify a time for production or inspection of responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions. Production need not materially interfere with the regular discharge of the functions and duties of the public agency. See Ind. Code § 5-14-3-7(a).

The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

The circumstances affecting the “reasonableness” of timely production of documents include: size of the public agency, number of pending requests, complexity of the request, and any other operational consideration which may reasonably affect the public records process. In this case, your formal complaint was dated approximately forty (40) calendar days after the submission of your public records request to the Governor.

The request itself was sufficiently complex to involve a large number of documents -perhaps, as suggested by the Governor, an amount numbering into the hundreds. Additionally, the Office of the Governor is a relatively small public agency with a multi-faceted set of obligations and responsibilities. While this Office does not condone any significant delay in the production of public records, there is a practicality element when determining timeliness of responses. The Courts have also recognized such constraints in *Smith v. State*, 873 N.E.2d 197 (Ind. Ct. App. 2007) (“*Implicit in Indiana Code § 5-14-3-3 is practicality*”).

The Governor has stated your request is being processed. It is my sincere hope you have already received the documents you are requesting or they are forthcoming in the very near future.

### **CONCLUSION**

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Office of the Governor has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Mark Ahearn, Esq.