



STATE OF INDIANA

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March 1, 2016

Mr. Anthony Cook
130 South Meridian Street
Indianapolis, Indiana 46225

Re: Formal Complaint 16-FC-15; Alleged Violation of the Access to Public Records Act by the Indiana Economic Development Corporation

Dear Mr. Cook:

This advisory opinion is in response to your formal complaint alleging the Indiana Economic Development Corporation ("IEDC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. IEDC has responded via Mr. Chris Cotterill, 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 January 29, 2016.

BACKGROUND

Your complaint dated January 22, 2016 alleges the Indiana Economic Development Corporation violated the Access to Public Records Act by not fulfilling your request in a reasonable amount of time.

On July 6, 2015, the Indianapolis Star requested "any records" in IEDC's possession related to contractor Porter Novelli. The request included emails, reports and recommendations. You assert 28 weeks is a sufficient amount of time to provide the requested documents.

On February 18, 2016 IEDC responded. IEDC acknowledges its delay in production, but asserts its actions were proper under the circumstances. IEDC contends the original request lacked reasonable particularity under the APRA, but stated the IEDC decided to undertake a search for records regardless of their contention.

IEDC states it has screened over 400 responsive records for deliberative materials and has made the appropriate redactions. However, while this records request was ongoing, IEDC had several other duties to attend to which resulted in the delay of document

production. IEDC assured this Office the records will have been released by February 29, 2016.

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 Indiana Economic Development Corporation 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 IEDC’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).

In past dealings with the IEDC this Office has been pleased with its effort in cooperating with requestors. I know the IEDC to deal in good faith and it solicits my advice regularly. I also recognize the sensitivity of the records requested and the potential to redact deliberative material and communication from those records.

On the other hand, it has taken well over six (6) months for you to receive these records. Even if the IEDC considered your request to lack specificity, it did not deny your request and instead undertook the task of searching for and gathering the records sought. By doing so, IEDC availed itself of the responsibility of being timely pursuant to Ind. Code § 5-14-3-3. Simply put, a reasonable period of time has long since elapsed since you filed your complaint.

As I have stated in the past, when agencies are faced with a voluminous request – reasonably particular or not – the best course of action is to release available records in a piecemeal manner as they become available instead of waiting until they are all compiled. If this is not possible, then alternatively an agency should be in semi-regular contact with the requestor to assure them the task is still at hand and the request has not been dropped. I encourage IEDC to be mindful of those considerations in the future.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana Economic Development Corporation has violated the Access to Public Records Act by failing to provide responsive documents within a reasonable time. However, it is my sincere hope you have received the records by the time this Opinion reaches you as IEDC has indicated.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Chris Cotterill, Esq.