



STATE OF INDIANA

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August 26, 2016

Brian Slodysko
200 West Washington Street
Indianapolis, Indiana 46204

Re: Formal Complaint 16-FC-171; Alleged Violation of the Access to Public Records Act by the State of Indiana, State Board of Education

Dear Mr. Slodysko:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, State Board of Education (“Board”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The Board has responded via Mr. Timothy Schultz, Esq.. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 20, 2016.

BACKGROUND

Your complaint dated July 20, 2016 alleges the State of Indiana, State Board of Education violated the Access to Public Records Act by taking an unreasonable time to provide records.

On June 21, 2016 you submitted a request for “any completed public records requests for Tom Lobianco from 2013 to 2015, including all documents that were provided to Lobianco through those requests. The Board acknowledged your request on June 22, 2016 and informed you records would be forthcoming in September.

On July 29, 2016 the Board responded. The Board notes your request involves a large number of records and could take up to September to complete.

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 Indiana Code § 5-14-3-1*. The State of Indiana, State Board of Education is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Board’s disclosable public

records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The APRA does not specify a time for production or inspection of responsive records. Instead, it states a request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. Reasonableness depends on the circumstances, including: 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. The Board contends your request will take time due to the broad nature of your request and the fact Indiana's education agencies have been reorganized several times.

While the scope of a request is a definite factor affecting timely production of records, a self-imposed timeline is, in most cases, a troublesome exercise. A self-imposed deadline may take into account the scope and nature of the request but based on my experience a deadline like this gives the perception of being arbitrary. This is especially so when the Board does not yet know exactly how many records are responsive to your request. There may be many or there may be few, but three (3) months is a significant amount of time for a records request response. And being somewhat familiar with the records in question, the Board may actually end up deferring to, or working in conjunction with, the Indiana Department of Education to respond.

Public access should be integrated into the course of a public agency's routine duties and not set aside until a period of downtime when it is convenient to respond. Instead of deadlines, I suggest the Board follow guidance I have issued on numerous occasions: public agencies should gather records and release them piecemeal to the requestor. Doing so keep all parties involved and assures the requestor his request is not being ignored. My recommendation is that the Indiana State Board of Education reevaluate its approach to your request (and perhaps other requests as well) with a policy which more accurately reflects the underlying purpose of the Access to Public Records Act.

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

Cc: Mr. Timothy Schultz, Esq.