



STATE OF INDIANA

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November 29, 2010

Mr. Terry C. Landgraf
4946 Indiana Beach Rd.
Monticello, IN 47940

Re: Formal Complaint 10-FC-268; Alleged Violation of the Access to Public Records Act by the White County Board of Aviation Commissioners

Dear Mr. Landgraf:

This advisory opinion is in response to your formal complaint alleging the White County Board of Aviation Commissioners (the "Board") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* I understand that you have already received a copy of the Board's letter to you enclosing your requested records.

BACKGROUND

In your complaint, you allege that on October 18, 2010, you requested a copy of the current White County Hangar Waiting List (the "Record"). After you paid the applicable fee for the Record, Assistant Airport Manager Derek Shannon informed you that you would have to wait until the next day to speak with Denita Shelton before receiving the Record. When you returned the next day and spoke with Ms. Shelton, she informed you that you would have to wait until the next meeting of the Board so the Board could review it. After you explained that you did not want a reviewed or edited version of the Record but a current version, she refunded the fee you paid for a copy of it.

In response to your complaint, Board attorney L. Dowal Dellinger sent a letter directly to you and enclosed a copy of the Record you requested. Mr. Dellinger stated that he was not sure why Ms. Shelton did not provide you with a copy on October 19th. He encouraged you to contact him or Board President Phil Gutwein if you have any difficulties obtaining records from the Board in the future.

ANALYSIS

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The Board does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

While the APRA does provide deadlines for responding to public records requests, *see* I.C. § 5-14-3-9, it does not prescribe deadlines regarding the actual production of public records responsive to an APRA request. However, the public access counselor has repeatedly stated that records must be produced within a reasonable period of time, considering all of the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Here, Mr. Dellinger acknowledges that it is unclear why the Record you requested was not released to you on either October 18th or 19th. Consequently, the Board has not met its burden to show that it acted within a reasonable period of time, but I trust Mr. Dellinger’s response to you satisfies your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board has not met its burden of proof to show that it provided the Record to you within a reasonable period of time. The Board has now fulfilled your request and has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: L. Dowal Dellinger