



STATE OF INDIANA

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July 29, 2008

Michele Blaas
PO Box 6
Buck Creek, Indiana 47924

Re: Formal Complaint 08-FC-172; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Board of Commissioners

Dear Ms. Blaas:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Board of Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records; specifically, you allege the Commissioners have not produced the records you requested in a reasonable period of time. I have enclosed a copy of the Commissioners' response to the complaint for your reference. It is my opinion the Commissioners did not violate the APRA.

BACKGROUND

In your complaint you allege that you submitted a request for access to records to the Commissioners on March 20, 2008. You requested correspondence, including electronic mail messages ("emails"), and other materials sent to or from a number of public officials and employees. You allege that on March 27 you received a letter from the attorney for the county. The letter contained an indication the estimated time for producing the records would be five to seven weeks. You further allege that on April 7 a Commissioner requested a meeting with you; at the time of the call you agreed to suspend the request but retained the right to reinstate the request. At the April 17 meeting you reinstated the March 20 request. You further allege that at a July 2 meeting of the county council and Commissioners, you inquired about the status of the request but received no response. You filed this complaint on July 11, alleging the Commissioners have taken an unreasonable amount of time to respond to the request.

The Commissioners responded to the complaint by letter dated July 11 from attorney David Luhman. The Commissioners contend the time for production of the records has been reasonable considering the volume of the request and the time required for retrieval, restoration and review of the requested records.

Mr. Luhman included with the response a copy of a July 11 letter to you. In that letter, Mr. Luhman indicated the county maintains email accounts for eleven individuals identified by title in your request. Once this was determined, the county information technology department restored the email accounts of each individual from the eighteen monthly backup tapes maintained by the county. The county then used a query to identify records which might meet your request. The Commissioners contend that because of the need to maintain the regular function of county business, the restoration could not be completed until after the May 6 primary election. The initial retrieval and restoration produced in excess of 14,000 emails to be reviewed for responsiveness to your request and to determine whether the records were disclosable.

The Commissioners contend the initial five to seven week estimate was provided within the statutory time for response to the request but before the county was able to restore the email accounts and learn of the volume of documents retrieved. As of July 11, the county had reviewed approximately 10,000 of the retrieved documents. The county estimates the initial review has taken approximately 28 hours, with the county dedicating an average of one hour per day reviewing the records. The county estimates review of the remaining records would take approximately eleven man hours over the following several weeks. In the July 11 letter, Mr. Luhman indicated the county would make the already reviewed records available to you at that time rather than waiting until all records had been reviewed.

Mr. Luhman provided my office with a copy of a July 24 letter sent to you indicating the review of the final group of records had been completed and those disclosable records had been provided to you.

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 of Commissioners is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Commissioners during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a).

However, section 7 does not operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, you made your initial request by letter dated March 20, and the Commissioners responded by letter dated March 27. The Commissioners' response on March 27 was timely, pursuant to I.C. § 5-14-3-9(b). Between your request on March 20 and your complaint on July 11, the Commissioners communicated with you at least two additional times, once in a telephone call and once in an in person meeting.

It is my opinion the Commissioners have demonstrated the county worked diligently to produce the documents you requested in a reasonable amount of time. The Commissioners contend the information technology staff was not able to restore the email accounts until after the May 6 primary election. The Commissioners are required to regulate any material interference with the regular discharge of duties (*See* I.C. § 5-14-3-7(a)). It is my opinion dedicating information technology services to administering what was by many accounts a primary election with historic turnout numbers was an appropriate regulation of material interference. Since your complaint, the Commissioners provided a large portion of the records to you as they became available. As I understand it, the Commissioners have now completed production of the records.

Your request sought a very large number of records, and considering that volume along with the county's need to restore the email accounts and review each record to determine whether it was disclosable, it is not unreasonable to assume it would take some time for the Commissioners to complete these tasks. I do not believe the time taken here was an unreasonable amount of time to restore, retrieve, review, and copy the number of records you requested.

It would be my advice, though, to the Commissioners that in the future they communicate with requesters regarding the status of the request when the production is taking considerably longer than expected. While I do not believe the time taken was unreasonable, you were expecting the records within five to seven weeks. In my opinion it would have been most appropriate for the Commissioners, at the five to seven week mark, to indicate to you the process for retrieving and producing the records would indeed take longer than expected. Once the Commissioners learned the volume of the

records retrieved, the Commissioners could have indicated a new expected timeline for production.

CONCLUSION

For the foregoing reasons, it is my opinion the Tippecanoe County Board of Commissioners has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: David Luhman, Hoffman, Luhman & Masson, PC
Tippecanoe County Board of Commissioners