



STATE OF INDIANA

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July 25, 2012

Paul Straughn
P.O. Box 26
Ela, Illinois 60519

Re: Formal Complaint 12-FC-174; Alleged Violation of the Access to Public Records Act by the Office of the Attorney General.

Dear Mr. Straughn:

This advisory opinion is in response to your formal complaint alleging the Office of the Attorney General ("Attorney General") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Matt Light, Chief Counsel for Advisory and ADR Services, responded on behalf of the Attorney General. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on June 15, 2012, you mailed a written request for records to the Attorney General that was received on June 18, 2012. As of June 25, 2012, you further allege that the Attorney General had failed to provide the requested documents or acknowledge receipt of the request within the seven (7) day time period specified by I.C. § 5-14-3-9. As of June 28, 2012, the date you filed your formal complaint, you still have yet to receive any documents or correspondence from the Attorney General.

In response to your formal complaint, Mr. Light provided that to his knowledge, you have submitted two (2) public records requests to the Attorney General this year. The first request was dated May 3, 2012 and was received by the Attorney General on May 7, 2012. The initial request was routed to and received by the Attorney General's Advisory Division ("Division") on May 11, 2012. The Division responded in writing to your request on May 14, 2012, acknowledging receipt of your request, and provided that the records would be provided in a reasonable period of time. The Attorney General provided a preliminary response on June 7, 2012 by email, a letter response on June 8, 2012 with detailed explanations/responses/disclosures as required by the APRA, and a supplemental response by email on June 27, 2012.

On June 15, 2012, you mailed a second public records request to the Attorney General. The second request was dated June 15, 2012 and was directed to the attention of the Attorney General's Consumer Protection Division ("CPD"). The request was received on June 18, 2012 by CPD staff that review, sort, and route dozens of pieces of mail daily, in addition to other job responsibilities. Unfortunately, the staff person who processed your second request did not notice that it was a public records request and thought it was related to a closed consumer complaint filed. The mailing was handled similarly to other types of correspondence dealing with consumer complaint files and was ultimately filed away with the closed consumer complaint files. The second request was never routed to the Division so that an appropriate and timely response could be prepared and distributed pursuant to the requirements of the APRA.

You filed a formal complaint with the Public Access Counselor's Office on June 28, 2012 in relation to the second request, which did not include the contents of the second request. The Division immediately began coordinating with supervisors and staff in relevant areas of the office to locate the second request, which was found on July 16, 2012. Notably, you did not contact the Division regarding your second request despite the fact that you have direct and frequent e-mail contact with the Division regarding your initial request. At no time did you mention the second request that was submitted. The requests overlap to a significant degree, and direct substantive responses to a separate complaint filed with the Public Access Counselor's Office are being prepared and will be submitted by the August 1, 2012 deadline.

Attorney General Greg Zoeller and office executive staff frequently and regularly stress the importance of timely, accurate, and respectful responses to public records requests. In that regard, the office holds periodic training for staff and distributes public record requests processing materials and reminders. The Attorney General regrets that this particular public records request was not noticed in the voluminous mail that the office receives on a daily basis and was not appropriately routed so that a timely response could have been submitted. The Attorney General did not intentionally or even knowingly ignore your second request. The office has now responded directly to your second request and provided all records that are responsive to it.

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* I.C. § 5-14-3-1. The Attorney General is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Attorney General's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24

hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. For requests tendered by mail, the date of receipt by the public agency is the operative trigger to begin the statutorily prescribed response time. *See* I.C. 5-14-3-9(b). The Attorney General received your written request for records on June 18, 2012. Accordingly, the Attorney General was required to respond to your request in writing by June 25, 2012, which it failed to do so. It is my opinion that the Attorney General acted contrary to the timelines provided under section 9 of the APRA in responding to your written request for records. As the Attorney General has now provided all records that are responsive to your original request, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Attorney General acted contrary to the APRA by failing to respond to your written request within the timelines provided by section 9 of the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Matt Light