

September 17, 2007

Melyssa Donaghy
4169 Central Avenue
Indianapolis, Indiana 46205

Re: Formal Complaint 07-FC-247; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Ms. Donaghy:

This is in response to your formal complaint alleging the City of Indianapolis ("City") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records related to expenses associated with a lawsuit to which you are a party and a press conference held by the City and by refusing to grant your request for a meeting. A copy of the City's response is enclosed for your reference. I find that the City did not violate the APRA.

BACKGROUND

In your complaint you allege that at a July 21, 2007 meeting you spoke with Deputy Mayor Steve Campbell about a lawsuit to which you are a party. You allege you request from Mr. Campbell access to records related to the expenses associated with the suit as well as the expenses associated with a December 2005 press conference. You allege Mr. Campbell indicated he would meet with you and your attorney to discuss the matter. You further allege that since the time of that conversation you have been denied access to the records you requested and have been denied a meeting with Mr. Campbell. You filed your complaint on August 16.

The City responded by letter from Assistant Corporation Counsel Lauren Toppen dated September 7. Ms. Toppen asserts that Mr. Campbell contends he spoke with you at the July 21 meeting but that you did not request access to records at that time. Ms. Toppen further contends the City first learned of your request for access to documents when it received a copy of your complaint on August 16. Upon learning of that request, the City searched its records and determined it has no records responsive to your request since the lawsuit and press conference were both conducted by City staff with City resources. Further, there are no records indicating time or money spent on the case or the press conference. Ms. Toppen also asserts the APRA does not require public agencies to grant meetings with members of the public.

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." Ind. Code §5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2.

Accordingly, any person has the right to inspect and copy the public records of the City 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 “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be made orally (in person at the office or by telephone) or in writing. I.C. §5-14-3-3(a); §5-14-3-9. A request must identify with reasonable particularity the record being requested and be, at the discretion of the agency, in writing on or in a form provided by the agency. I.C. §5-14-3-3(a).

Here you allege you requested the records related to the expenses associated with a lawsuit and a press conference. You indicate you requested such records from Mr. Campbell at an event held at the North United Methodist Church. Mr. Campbell asserts that you spoke to him about the City budget but did not request particular records. Even if you did specifically request records from Mr. Campbell, it is my opinion this would not be considered a request for access to records under the APRA. The APRA specifically addresses requests made in person by physically appearing at the office of the public agency, by telephone, or by mail or facsimile. I.C. §5-14-3-3; §5-14-3-9. The APRA does not address requests made of public officials outside the office. When public officials travel outside their offices to attend meetings, events, and gatherings, they generally speak with numerous individuals. To consider any of those conversations as requests for access to records under the APRA would fall outside the letter of the law and would be quite impractical. As such, even if you did request copies of the records from Mr. Campbell when he was away from the office at an event, your conversation would not constitute a request for access to records under the APRA.

The City indicates it did not receive a request for records from you either in writing or orally. While the City has a duty to respond to any request for records it receives (see I.C. §5-14-3-9), it cannot respond to a request it does not receive. As such, the City did not violate the APRA by not responding to a request it did not receive. After receiving your complaint, the City did research the issue and found it has no records responsive to your request.

Regarding your complaint that Mr. Campbell will not meet with you, this is outside the scope of the Office Public Access Counselor. Nothing in the APRA or the Open Door Law (I.C. §5-14-1.5) requires a public agency to grant a member of the public a meeting.

CONCLUSION

For the foregoing reasons, I find that the City of Indianapolis did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Steve Campbell, Deputy Mayor
Lauren Toppen, City of Indianapolis Assistant Corporation Counsel