

October 10, 2007

Susan Perry
610 North Meridian Street
Lebanon, Indiana 46052

Re: Formal Complaint 07-FC-268; Alleged Violation of the Access to Public Records Act by the City of Lebanon Clerk-Treasurer

Dear Ms. Perry:

This is in response to your formal complaint alleging the City of Lebanon Clerk-Treasurer ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to produce the records you request in a reasonable period of time. It is my opinion the amount of time the Clerk has taken to produce records responsive to your request is not unreasonable.

BACKGROUND

In your complaint you allege that you submitted a request on August to the Clerk for the following:

1. All records including invoices and statements sent to the City from H.J. Umbaugh and Associates from January 2004 to August 2007.
2. All records showing funds received by the City from Insight Cable Company from 2004 through 2007.
3. All records showing the amount of funds the City has collected or shall collect from the food and beverage tax since its inception.
4. A copy of the City's budget for the 2007 budget year.

You further allege the Clerk indicated she would attempt to have all the records you requested ready for you by October 15. You filed your complaint on September 10 alleging this to be an unreasonable period to time for production of the records. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Clerk responded to your complaint by letter dated September 20. The Clerk indicated she had notified you that day, September 20, the records you requested were available for you. Regarding your complaint, the Clerk contends she did not intend to deny you access to records. The Clerk indicated that at the time of receipt of your request she was already working on other requests which were to be completed before your request was processed. She further indicated that since you requested records for four years, she was required to spend time researching and retrieving records, some of which could only be done manually. The Clerk also asserts that between the time of your request and the time of her letter she was responsible for several other duties and daily responsibilities, including work on the 2008 budget.

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

The Clerk 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 Clerk 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). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a).

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 Access to Public Records Act. 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 your initial request was made on August 6. The Clerk responded to your request upon receipt indicating she was compiling the information. You submitted a letter to the Clerk on August 29 requesting a status report. The Clerk responded, indicating she would attempt to have the records available to you by October 15.

While I understand time is of the essence in this matter because you indicate you require these records to prepare for an October 16 event, I do believe the Clerk has demonstrated she is working to produce the documents you requested in a reasonable amount of time. The Clerk indicated she has spent time researching and reviewing documents to determine which are responsive to your request. The Clerk has also telephoned my office several times over the past few months to be sure she is following the APRA in her response and production times.

The Clerk notified you on September 20 the records you requested were ready. I do not believe approximately six weeks to be an unreasonable amount of time to procure and complete the review of the volume of records you requested from a four-year period. What I would recommend to the Clerk in the future, though, is to produce documents as they become available. As has long been the suggestion of this office, when documents in response to a request are voluminous, the agency should provide documents in the interim as they become available. So at regular reasonable intervals, the agency should provide the documents available at that time. This further displays the effort the agency is making to provide transparency in government and provide access to public records.

CONCLUSION

For the foregoing reasons, it is my opinion the amount of time the Clerk has taken to produce records responsive to your request is not unreasonable.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Debbie Ottinger, City of Lebanon Clerk-Treasurer