

October 15, 2007

Natalie McGuire
2875 North State Road 39
Lebanon, Indiana 46052

Re: Formal Complaint 07-FC-275; Alleged Violation of the Access to Public Records Act by the City of Lebanon Clerk-Treasurer

Dear Ms. McGuire:

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 denying you a copy of the 2008 budget for the City of Lebanon. It is my opinion the Clerk did not violate the APRA.

BACKGROUND

In your complaint you allege that you appeared at the Clerk's office on September 7, 2007 and requested a copy of the 2008 City of Lebanon budget. You allege you were told you could not inspect the budget because it had not yet been reviewed. That afternoon, you spoke with the Clerk who indicated you could come to the office the following Monday to get a copy of the budget. When you appeared on Monday, September 7, the Clerk indicated there were requests to access to records received prior to your request that must be filled before she could address your request. You returned to the office on September 12 with a written request for a copy of the budget, and you allege the Clerk indicated people were still ahead of you. She took the request and indicated she was allowed five to seven days to respond under statute. You filed this complaint on September 13 alleging denial of access.

The Clerk responded to your complaint by letter dated September 26. The Clerk indicated the first response you received from her office, that you could not inspect the budget until it was approved, was erroneous. The Clerk then directed her staff to forward all requests for access to records to her. The Clerk contends she was concerned that it would be unfair for her to stop work on a request for access to records her office received prior to your request in order to fulfill your request. The Clerk contends she indicated this to you and responded to your request in writing within 24 hours of receipt. The Clerk further indicates she has received more requests for access to records within the last month than she has received since she took office in 2004.

The Clerk indicated on in an electronic mail message dated October 1 that she sent you a letter on September 26 indicating your copy was available and that you retrieved it from the office on October 1.

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. 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*.

Regarding your initial request on September 7, it was not appropriate for the staff member to deny you access to the record on the basis it had not yet been reviewed. Public records are public records regardless of their status of draft records unless an exception to disclosure is present. I.C. §5-14-3-3. But I understand the Clerk corrected this misapplication of

the APRA the same day it occurred and has put in place a procedure to prevent it from occurring again.

Regarding the Clerk's response to your request, when a request is delivered in person to the public agency, the request is deemed denied if the agency does not respond within 24 hours. I.C. §5-14-3-9(a). Here, if the Clerk indicated to you she had five to seven days to respond, that would be a violation of the APRA. Because the Clerk responded to your request within 24 hours, though, I do not find a violation regarding the response.

Regarding your complaint you were denied access to a copy of the 2008 budget, the Clerk indicated she was addressing requests for access to records in the order in which they were received. It is my opinion this is a reasonable practice, as it ensures requests are handled fairly and without prejudice. Because the APRA does not provide a time period for production of records, we must rely on the opinion of previous counselors that records shall be produced in a reasonable period of time. *Opinion of the Public Access Counselor 02-FC-45*. It is my opinion it is reasonable for the Clerk to produce records pursuant to requests in the order in which they are received.

I would suggest to the Clerk, though, that in the case of a document like the City budget for which I would imagine multiple requests are received at or around the time the budget is being considered for approval, it might be efficient to keep a public copy available for inspection. Then even if the Clerk does not have time to immediately produce a copy, any member of the public who wishes to inspect the record may do so at the office, and the Clerk will be able to continue working on previously received requests.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Debbie Ottinger, City of Lebanon Clerk-Treasurer