

December 26, 2007

Brian Sweeney
PO Box 40031
Indianapolis, Indiana 46240

Re: Formal Complaint 07-FC-355; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Sweeney:

This advisory opinion 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. I have enclosed a copy of the City’s response to your complaint for your reference. In my opinion the City has not violated the APRA.

BACKGROUND

In your complaint you allege you submitted to the City on September 5, 2007 and October 19, 2007 requests for copies of records. Although your complaint does not indicate what records you sought, it is my understanding by reading your enclosures that the records you requested relate to the City’s policies or practices related to firearms. You filed the complaint, dated November 21 and received November 26, alleging the City did not respond to your requests.

The City responded to your complaint by letter dated December 20 from Assistant Corporation Counsel and City Public Access Counselor Lauren Toppen. Ms. Toppen contends that the Indianapolis Metropolitan Police Department (“IMPD”) timely responded to your requests. Ms. Toppen indicates that IMPD received your September 5 request on September 10 and issued a response on September 17. On October 18, you asked for an update on the status of the request and an outstanding request from January 12. Ms. Toppen contends that the following day, October 19, you threatened that if you did not receive a response by the close of the business day you would submit another, larger request. You then submitted the October 19 request which is at issue here.

Ms. Toppen contends IMPD issued a response to your October 19 request on October 22. The response consisted of 676 pages of documents attached as Microsoft Excel files in partial

fulfillment of your January 12 request. In the response, IMPD indicated it was still working on your subsequent requests, including the October 19 request. Ms. Toppen indicates that over the next few days, IMPD addressed an issue raised in the September 5 request and answered your follow-up questions on the matter.

Since October 22, IMPD has continued to gather and review records responsive to your request. To date, IMPD has produced 2,674 pages responsive to your January 12 request, 12 pages responsive to your September 5 request, and 427 pages responsive to the October 19 request. Finally, Ms. Toppen indicates that the records related to these requests were primarily the responsibility of two IMPD staff members who gathered and reviewed the records.

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. 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 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 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).

At issue here is your October 19 request for records. It must be considered, though, in light of the January 12 request and the September 5 request, since those requests were made to the same division of the same agency concerning the same matter. The City contends that IMPD responded to your requests within the time allowed by the APRA, seven days for requests delivered by mail or facsimile. 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 Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor's office 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.

Here, it is my understanding the records responsive to your three requests for records related to firearms numbered 3,789 pages. In my opinion, your requests were broad in nature (e.g. “[a]ll records relating to the intake, storage, return and disposal of firearms . . . which have come into the custody of the [IMPD]” for the period of 1996 to the date of this request, from your January 12 request). While your October 19 request may not have been as broad as the January 12 and September 5 requests, they must be considered together since the requests were made of the same public agency and for the same records. The City has indicated that it was necessary for IMPD to review each of the responsive records to determine whether they were disclosable. The City has further indicated that the staff responsible for these duties numbers two individuals, who at the time were undergoing an update of the record keeping system. Considering these factors, it is my opinion the time to produce the records response to your request was not unreasonable and neither the City nor IMPD violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the City has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Lauren Toppen, Assistant Corporation Counsel, City of Indianapolis