

January 2, 2008

Devin Brubaker
2015 South Third Street
Niles, Michigan 49120

Re: Formal Complaint 08-FC-3; Alleged Violation of the Access to Public Records Act by the City of South Bend

Dear Mr. Brubaker:

This advisory opinion is in response to your formal complaint alleging the City of South Bend ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by taking an unreasonable amount of time to produce records pursuant to your request. I have enclosed a copy of the City's response to your complaint for your reference. It is my opinion the City has not violated the APRA.

BACKGROUND

In your complaint you allege that on October 3, 2007 the City approved your request for access to records, specifically to data contained in selected electronic correspondence received and created by the City. You filed this complaint on December 5, alleging you have not yet received the requested records.

The City responded to your complaint by letter dated December 12 from Thomas Bodner, Assistant City Attorney. Mr. Bodner provides further information regarding your request. He contends the City received fifteen public records requests from you on October 2. Mr. Bodner responded to those collectively on October 3. In that response, he indicated some requests were approved, some denied, and some approved subject to redaction, and he cited the statutory authority for redacting and denying certain records. Many of the requests involved electronic mail messages ("email") subject to redaction. Mr. Bodner explains that the requests were forwarded to various departments, and the resulting records consist of 3,299 emails, 2,000 of which would survive redaction. The City sent you a letter dated October 19 requesting prepayment for the documents. On October 26 you indicated you wanted the records on disk. On November 4 you indicated the format for the disk. Mr. Bodner indicates that in the month since then, the City has examined hundreds of the emails, but thousands remain to be examined.

Mr. Bodner further indicates that he met with you on December 7. He showed you the disk containing the emails and explained the process, and he indicates you “seemed satisfied” with what the City was doing. The only other matter you addressed with him was in relation to any lawsuits filed by a certain individual.

Mr. Bodner explains that when the review of the emails has been completed, a new disk will be formatted redacting any emails which fall under one of the exceptions to disclosure previously cited by Mr. Bodner. The City acknowledges the process is lengthy but contends that the requests are voluminous and an examination is necessary prior to release. Mr. Bodner further offers that if you are willing to pay for more than one disk, the City will provide the records to you incrementally.

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(m).

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 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 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 APRA. 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, the City responded to your request the day after receiving it, which is within the time allowed by the APRA. I.C. §5-14-3-9. The City then communicated with you regarding the volume of records responsive to your request, and you responded with an indication of the medium in which you would like to receive the records. The City has indicated that each of the emails must be reviewed to separate the disclosable from nondisclosable information. I always advise an agency to considering providing records on an incremental basis when the response is voluminous. The City has offered to do this for you if you agree to pay for the additional disks required to produce the records incrementally.

It is my opinion the City is diligently reviewing the records you requested to separate the disclosable from nondisclosable information. Given the number of requests you submitted at one time and the number of records responsive to those requests, I do not believe the City has taken an unreasonable amount of time to produce the records. Further, it is my opinion the City is showing its intent to comply with the letter and spirit of the APRA by offering to provide the records to you on an incremental basis.

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: Thomas Bodner, Assistant City Attorney, City of South Bend