



STATE OF INDIANA

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July 26, 2010

Mr. Brian P. Sweeney
P.O. Box 502986
Indianapolis, IN 46250

Re: Formal Complaint 10-FC-152; 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 (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. The City's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that on June 1, 2010, you served the City with an open records request. As of June 23rd, you had not received your requested records.

My office forwarded a copy of your complaint to the City. Chief Deputy Corporation Counsel and Public Access Counselor Andrea Brandes responded on the City's behalf. Ms. Brandes notes that you initially submitted a records request to the City on February 19, 2009, in which you sought records from the Indianapolis Metropolitan Police Department ("IMPD"). The City acknowledged receipt of that request the same day and asked you to provide clarification regarding the records sought. You ultimately filed a formal complaint regarding that request in October of 2009, which was rejected by this office for being untimely.

Subsequently, you submitted a second request to the City on June 1, 2010, which Ms. Brandes states the City received on June 2nd. That request was nearly identical to your initial request, but it contained one additional detail that allowed the City to narrow the scope of your request. Ms. Brandes acknowledges that the City failed to respond to your second request within seven (7) days as required by the APRA, but she claims that your complaint filed sixteen (16) business days after the submission of your request did not give the City sufficient time to complete what she describes as a "somewhat voluminous request for records." Ms. Brandes disputes that the City ever denied your

request because a search for your records was already underway when you filed your complaint. The retrieval of the records was delayed due to the fact that they are stored in multiple locations, the fact that you sought records from January 1, 2008, to the present, and because two of your requests required the City to search for “[a]ll governmental records” regarding the fingerprinting of an attorney and “[a]ll governmental records from 1/1/2008 to present [sic] that evidence any return, release or transfer of firearms to IMPD to anyone but the rightful owner of the firearm.”

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. The City is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the public records are excepted from disclosure as 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 (7) 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 from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the City failed to respond to your written request within the required seven (7) days, the City violated subsection 9(b) of the APRA.

However, the APRA does not set any time periods for *producing* public records, merely for responding to the request.” *Opinion of the Public Access Counselor 02-FC-09* (Counselor O’Connor: an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added). The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency 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 ultimate 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, the City cites to the breadth of your request, the fact that the responsive records, if

any, are stored in multiple locations, and the fact that you sought records from 2008 to the present. Under such circumstances, the City's failure to produce the records you requested of sixteen (16) business days between the date of your request and the day you filed your formal complaint was not necessarily an unreasonable delay.¹ It is my understanding that the City has now assembled a large number of records responsive to your request. IMPD officials are still in the process of updating records related to firearm releases and expect to complete that process within one to two weeks. In my opinion, a delay beyond August 13th by the City would not be reasonable.

To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the City violated the APRA if it failed to respond to your written request within seven (7) days, but the City has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Andrea Brandes

¹ Under the APRA, “[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) 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). It is not clear that a request for “[a]ll government records. . .” is a reasonably particular request. The public access counselor has repeatedly stated that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 08-FC-135, 07-FC-353*. Additionally, Counselor Hurst noted that “when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested.” *Opinion of the Public Access Counselor 04-FC-38*. The City is not contesting the validity of your request and has voluntarily conducted a search of all its records for responsive documents. Under such circumstances, it is understandable that a public agency would require more time to locate responsive records than it otherwise would.