



STATE OF INDIANA

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August 26, 2010

Ms. Lindsay M. Jancek
47 South Meridian Street, Suite 202
Indianapolis, IN 46202

*Re: Formal Complaint 10-FC-167; Alleged Violation of the Access to
Public Records Act by the City of New Albany Clerk*

Dear Ms. Jancek:

This advisory opinion is in response to your formal complaint alleging the City of New Albany Clerk (the "Clerk") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Clerk's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that on July 20, 2010, you hand-delivered a public records request to the Clerk's office. You called the Clerk's office towards the end of the business day on July 21st to inquire about the status of your request. Employees of the Clerk's office expressed that they were "pretty sure they had the information but [it] was held by the City Controller" who was out of the office but would be in touch with you regarding your request. You contacted the Clerk again on July 26th. At that time, one of the Clerk's employees informed you that you needed to speak to the Clerk and provided you with an alternate phone number to reach the Clerk directly. You state that as of July 28th, you had not heard back about whether or not your request was granted or denied.

In response to your complaint, the Clerk states that to the controller, who is now consulting with the sewer board's attorney about the information that you requested. The Clerk also noted that her office recently completed an "extremely large request" for you.

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 Clerk does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Clerk’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, you claim that the Clerk did not respond to your request within 24 hours; you had to call the Clerk’s office yourself to inquire about the status of your request. If the Clerk did not respond to your request within 24 hours, the Clerk violated the APRA.

The APRA does not prescribe deadlines regarding the actual production of public records responsive to an APRA request. However, the public access counselor has repeatedly stated that records must be produced within a reasonable period of time, considering all of 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.

The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Here, the Clerk has not explained why the Clerk’s office did not respond to your initial request or your other attempts to contact the office and inquire about the status of the request. Consequently, it is my opinion that the Clerk has failed to meet its burden of proof to show that the Clerk’s timeframe is reasonable.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk violated the APRA if the Clerk failed to respond to your hand-delivered request within 24 hours. Moreover, the Clerk has not shown that the Clerk’s timeframe for producing your requested records is reasonable.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Marcey J. Wisman