



STATE OF INDIANA

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November 1, 2010

Clr. Linda K. Treat
8126 E. 50th St.
Indianapolis, IN 46226

Re: Formal Complaint 10-FC-233; Alleged Violation of the Access to Public Records Act by the City of Lawrence

Dear Clr. Treat:

This advisory opinion is in response to your formal complaint alleging the City of Lawrence ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The City's response is enclosed for your reference.

BACKGROUND

You are a member of the City of Lawrence Common Council ("City Council"). According to your complaint, at a City Council meeting on September 13, 2010, you verbally requested that the City provide you access to a contract between the City and Comsulo, Inc. The mayor responded to your request orally at that time and informed you that you would receive a copy of the contract via email. As of September 28th, you had not received the contract.¹

My office forwarded a copy of your complaints to the City. City Corporation Counsel James Gutting responded by stating that the City provided you with a copy of the contract on October 5th. The City's records requests are normally submitted to Candy Davis, the City's information officer. Your request was not formally submitted to Ms. Davis because you orally requested it at the City Council meeting. As a result, City employees inadvertently failed to respond because there was a mistaken impression in the administration that you had already received the contract. As soon as the mistake was

¹ In a postscript to your complaint, you note that you are unclear about the nature of Comsulo, Inc.'s obligations under the contract, but you believe that the City has retained it to take photographs at City functions. You question who owns the photographs and how they should be distributed. I cannot address these issues by way of a formal complaint because it is not alleged that the City has denied you access to the photographs in violation of the APRA. *See* I.C. § 5-14-5-6 (requiring that a complainant show that a public agency "denied" a right under the APRA or Open Door Law). If you make a request for such photographs and the City denies you access to them, you may file a complaint with this office. Alternatively, you could seek my informal opinion on the matter under I.C. § 5-14-4-10(5).

brought to the attention of the City by way of your formal complaint, the City promptly sent you a copy of the contract. Mr. Gutting claims that there was no intent to deprive you of the contract because it had already been publicly reviewed and approved by the City's Board of Public Works and Safety at a public meeting.

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." Ind. Code § 5-14-3-1. The City is 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 City's public records 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 access to public 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 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, the City responded to your written request when the mayor informed you that you would receive a copy of the contract. You allege, however, that you did not receive the contract within a reasonable amount of time.

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* (O'Connor; advising that an agency's failure to produce requested documents within five days was not a denial under the APRA). There are no prescribed timeframes when the records must be produced by a public agency. 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 produced the contract on October 5th in response to your September 13th request. Normally, if a single record was requested and it was fully disclosable and easily obtainable by the public agency, such a timeframe would not be reasonable.

However, it is my understanding that the City promptly provided you with the contract once it discovered that your request was inadvertently unfulfilled. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that although the City unintentionally failed to produce the contract to you within a reasonable amount of time, the City promptly released the record to you once it discovered its oversight and did not otherwise violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: James M. Gutting