



# STATE OF INDIANA

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January 12, 2011

Mr. Michael J. Lovelace  
2711 Taylor Rd.  
Columbus, IN 47203

*Re: Formal Complaint 10-FC-313; Alleged Violation of the Access to Public Records Act by the Columbus Redevelopment Commission and Columbus Downtown, Inc.*

Dear Mr. Lovelace:

This advisory opinion is in response to your formal complaint alleging the Columbus Redevelopment Commission ("CRC") and Columbus Downtown, Inc. ("CDI") (collectively, the "Respondents") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. G. Terrence Coriden's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you sent a letter dated November 17, 2010, to Mr. Coriden requesting copies of "all receipts for [the] build out of Garage & Pub & Bistro 310 [sic] which is owned by [the] City of Columbus." You claim that Mr. Coriden had not responded to that request as of December 10th. However, in the same request you sought a copy of all leases for the same facility, which Mr. Coriden provided to you on December 1st.

In response to your complaint, Mr. Coriden states that your request was not directed towards any public entity, but to Mr. Coriden at his private office, which he claims is not a public entity. Your request also did not identify from which public entity the information was sought. Moreover, as for your request for copies of receipts, those records are not in Mr. Coriden's possession.

## 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 CRC does not contest that it is a public agency for the purposes of the APRA, and a previous advisory opinion from this office determined that CDI is currently subject to the APRA as well. I.C. § 5-14-3-2; *Op. of the Public Access Counselor 10-FC-202*. Accordingly, any person has the right to inspect and copy the public records of the CRC and CDI 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).

Here, Mr. Coriden argues that your request was not valid because it was not addressed to any public agency. Rather, it was addressed to Mr. Coriden at his private legal office. Generally, this office has held that requests sent to non-agency addresses are not valid requests. *See Opinion of the Public Access Counselor 08-FC-78*. In *Gregg*, the business address of a trustee was not the trustee’s home address; the trustee’s business address was a post office box. The requester was aware of the post office box address because he submitted requests for records in the past to that address and not to the trustee’s home. Nevertheless, the requester argued that the trustee should have to receive records requests at her home because she used part of her home as an office and performed some business functions there. Under those circumstances, Counselor Neal advised: “It is my opinion it is reasonable for the Trustee to direct official communications to the official address [i.e., the post office box] and telephone number of the township and away from her home address and telephone number.” *Id.*

Counselor Neal’s opinion in *Gregg* stands for the proposition that a requester is obligated to submit a records request to the mailing address provided by the public agency. As Counselor Neal rightly noted, the APRA applies to public *agencies* and not public *officials*. However, where a public agency’s advertised mailing address is also a public official’s home or private address, a requester acts reasonably by addressing a request for access to public records to that address. *See Op. of the Public Access Counselor 09-FC-233*.

Here, Mr. Coriden claims that his office address, 415 Washington Street, Columbus, is not a public agency. However, according to the Indiana Secretary of State’s corporate entity registration records, CDI’s entity address is also 415 Washington Street and Mr. Coriden is listed as CDI’s registered agent. Moreover, if Mr. Coriden viewed your request as invalid, it is unclear why you received a partial response on December 1st when you received the leases. Because Mr. Coriden’s address is also CDI’s entity address, it is my opinion that your request was valid notwithstanding the fact that it failed to specifically mention CDI. Your request was not valid with respect to CRC, however, because CRC’s official address is 123 Washington Street, Columbus.

Mr. Coriden claims that he has no other records responsive to your request for receipts. If that is true, and CDI also does not maintain the receipts you requested, then CDI has not otherwise violated the APRA. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.”

*Opinion of the Public Access Counselor 01-FC-61.* If CDI does maintain the records, however, CDI should release them to you unless an exception to the APRA applies, even if the records are not in Mr. Coriden's physical possession. *See Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005) (holding that public records include those records maintained for or on behalf of a public agency by a third party). You should submit a separate request to the CRC to inspect and copy disclosable records in the possession of that agency.

#### CONCLUSION

For the foregoing reasons, it is my opinion that you submitted a valid request for public records when you addressed your request to CDI's registered agent and entity address. If CDI has no records responsive to your request, CDI did not violate the APRA by failing to produce them. CRC has not violated the APRA because your request was not valid with respect to that agency.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: G. Terrence Coriden