



STATE OF INDIANA

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March 28, 2011

Mr. Edwin Locke
5318 Shadow Wood Ct.
Indianapolis, IN 46254

*Re: Formal Complaint 11-FC-60; Alleged Violation of the Access to
Public Records Act by the City of Indianapolis*

Dear Mr. Locke:

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.* The City's response from Chief Deputy Corporation Counsel and Public Access Counselor Andrea L. Brandes is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on December 31, 2010, you submitted a public records request to the City. The City responded with an acknowledgment in a timely manner. On February 14, 2011, you sent an inquiry to the City requesting an update on the status of your request. At that time, the only thing you had received from the City was one record from the Department of Public Works ("DPW").

In response to your complaint, Ms. Brandes states that the DPW notified you on March 8, 2011, that it identified four hundred and forty-three pages of email records responsive to your request, and that those would be available to you at a cost of \$.04 per page. She states that you picked up those records on March 11th. Ms. Brandes acknowledges that DPW took sixty-seven (67) calendar days to fulfill your request, but argues that DPW acted reasonably considering the breadth of your request, the number of responsive records, and the time required to identify, photocopy, and review and redact those records.

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."

I.C. § 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 records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Public agencies are required to respond to public records request within a certain amount of time, *see* I.C. § 5-14-3-9, but the APRA does not prescribe timeframes for the actual production of records. 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, your request to the City was quite broad. You sought access to “[r]ecords, reports, memo’s, [sic] emails, phone messages, receipts, invoices, claims, and other related documents involving the City of Indianapolis and any or all of the following: Mr. Thomas Geisse, The Community Through Youth Sport Foundation, Pike Youth Soccer Club” for the time period of July 2, 2010, through December 31, 2010. The City claims that the DPW required sixty-seven (67) days to search for and procure the four hundred and forty-three (443) responsive records, photocopy them, and review each record for confidential information. Given the breadth of your request and the voluminous number of records responsive to it, I am hesitant to hold that the City has failed to act reasonably. Moreover, I trust that the DPW’s production on March 11th satisfies your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the City should have responded to your request within seven days in accordance with section 9 of the APRA. The City has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Andrea L. Brandes