



# STATE OF INDIANA

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December 7, 2012

Mr. Todd M. Riggs  
9110 East Raymond Street  
Indianapolis, Indiana 46239

*Re: Formal Complaint 12-FC-344; Alleged Violation of the Access to Public Records Act by the City of Beech Grove's Clerk-Treasurer*

Dear Mr. Riggs:

This advisory opinion is in response to your formal complaint alleging the City of Beech Grove's Clerk-Treasurer ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Dan McMillan, Clerk-Treasurer, responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Clerk on or about October 30, 2012. You specifically sought all comprehensive plan details and employee census data from the City of Beech Grove's ("City") current group health insurance coverage, including dental, vision, and life. You requested the data in order to submit an accurate quote for the City's benefit programs, to which the City has an ordinance that all expenditures exceeding \$50,000 go through a competitive bidding process. On November 16, 2012, you were informed by Mr. Craig Riley that the Clerk had denied your request. You provide that the Clerk violated the APRA by denying your request for records.

In response to your formal complaint, Mr. McMillan advised that he never received a request from you for the records alleged in your formal complaint. Your request was sent to the Mayor and the Board of Public Works in November 2012, not the Clerk. After researching through 1,000 emails, the only email that Mr. McMillan located from you was sent on August 27, 2012, at which time you did not make a request for any records of the Clerk. Mr. McMillan detailed the process that was followed in selecting insurance coverage for the City, which was approved on December 3, 2012.

## 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.” *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

The Clerk has stated that it does not have a record of receiving your request for records. Rather, your request was submitted to the Mayor’s Office and the City’s Board of Public Works. I would note that in a November 16, 2012 email from Mr. Wiley, Mr. Wiley indicated to you that the Clerk had denied your records request. Thus, there appears to be confusion within the City’s offices as to which agency actually received your request. The Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether the Clerk received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). If the Clerk received your request and did not respond to it within these timeframes, the Clerk acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it. All other issues raised in your formal complaint regarding the Clerk’s actions in the selection of insurance coverage are outside the purview of this office.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk received your request and did not respond to it within the timeframes provided under section 9 of the APRA, the Clerk acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Dan McMillan