



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 15, 2013

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

Re: Formal Complaint 13-FC-273; 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 ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City was invited to respond to your request on September 16, 2013 but as of October 15, 2013 has not done so. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 16, 2013.

BACKGROUND

Your complaint alleges the City of Indianapolis violated the Access to Public Records Act by failing to provide you with documentation sought by a public records request you submitted on May 15, May 17, and July 16, 2013.

You allege that on these dates, you submitted to the City a request for the following records:

Emails and/or phone records of communications involving Mr. Mike Davis and any of the following City Employees: Mayor Greg Ballard, DPR Director, John Williams, DP employee Don Colvin, DPR employee Andre Denman, DPR employee Carrie Kasnicka (also may be Carrie Kasnicka Williams, DP employee Jennifer Pittman. The time frame for these communications would be December 1, 2012 thru February 1, 2013.

Emails and/or phone records of communications involving Mr. Thomas Geisse and any of the following City Employees: Mayor Greg Ballard, DPR Director

John Williams, DP employee Don Colvin, DPR employee Andre Denman, DPR employee Carrie Kasnicka (also may be Carrie Kasnicka Williams, DPR Director Lori Mizer, employee Jen Pittman, DPW employee Anthony McDaniel. The time frame for these communications would be December 15, 2012 thru February 14, 2013.

The City responded on September 13, 2013 indicating they were denying your request because you did not identify the records with reasonable particularity under Ind. Code § 5-14-3-3(a)(1). You cite previously issued Advisory Opinion 13-FC-81 as persuasive authority in the present matter.

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 Ind. Code § 5-14-3-1. The City of Indianapolis is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

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

The issue of the reasonable particularity standard in Ind. Code § 5-14-3-3(a)(1) has been addressed in several prior opinions. Former Public Access Counselor Hoage stated in 13-FC-81:

“Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176. Certainly a request cannot always be considered to be made without reasonable particularity solely because it covers a large number of records. As a general guideline, the public access counselor has advised that when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. See Opinion of the Public Access Counselor 09-FC-24.

That particular Opinion continues to discuss the relevant case law in *Anderson v. Huntington County Board of Commissioners*, 983 N.E.2nd 613 (Ind. App. 2013), which held

that a request lacked reasonable particularity when the sender **and** recipient of the email were not specifically listed. Applying the case to the current facts, it is difficult to determine exactly which records you seek based upon the request. The subject matter of the two individuals you list could potentially yield a significant amount of documentation.

Technology today allows subject matter searches and the like, but I cannot determine if the City has the requisite capability to perform those kinds of searches. In any case, the strict application of *Anderson* would unequivocally render your request as a “universal” one in the eyes of the court. Neither the recipient nor the sender was identified; only the subject matter and the timeframe. I hereby find the same.

As an aside, I have published several opinions which reflect my overall philosophy that public agencies should remain in communication with requestors to negotiate the parameters of a search in order to find responsive records. The spirit of transparency and access is fostered when this simple courtesy is extended. While not a requirement of the law, it is best practice for both parties to be communicative in these circumstances.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the City of Indianapolis has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Samantha DeWester, Esq.