



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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November 26, 2013

Mr. Greg D. Sabin #113650
Wabash Valley Correctional Facility
6908 S. Old U.S. Hwy. 41
Carlisle, IN 47838

Re: Formal Complaint 13-FC-315; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Sabin,

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.*, Ms. Samantha DeWester, Corporation Counsel, responded to your formal complaint. Her response is enclosed for your review. 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 October 28, 2013.

BACKGROUND

Your complaint dated October 28, 2013 alleges the City of Indianapolis violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b) on or about October 7, 2013.

On or about May 16, 2013, you wrote to the City of Indianapolis requesting a number of records pertaining to approximately 22 individuals who may or may not have had criminal records associated with them, including booking photos.

On May 22, 2013, City staff timely acknowledged your request and informed you the gathering of the documents would commence immediately. On October 7, 2013, the City informed you that a number of the records could not be gathered due to their non-existence. Furthermore, the City released 51 pages of records responsive to your request. Two remaining individuals' records were being withheld under the exception enumerated in Ind. Code § 5-14-3-4(b)(23). The remainder of the booking photos were released to you on October 24, 2013.

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.

Your main complaint is the withholding of records relating to two individuals. The City contends non-production was justified under Ind. Code § 5-14-3-4(b)(23). They do not identify under which subsection the individuals fall into. The statute states the following records are discretionary as to their release:

- (23) Records requested by an offender that:
 - (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
 - (iii) a judge (as defined in IC 33-38-12-3);
 - (iv) the victim of a crime; or
 - (v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime; or
 - (B) concern or could affect the security of a jail or correctional facility.

I am not a finder of fact and therefore cannot speculate why the two individuals’ records were withheld. If they do fall into one of the enumerated categories, then there is no violation. The fact all of the other records were released indicates to me they considered the two individuals to be classified under subsection 23.

The second part of your complaint deals with the booking photos. You were sent a letter on October 24, 2013 indicating the photos were available to you upon receipt of payment. I can infer this letter did not reach you until after the filing of the complaint. I trust the production of the booking photos is to your satisfaction.

CONCLUSION

For the foregoing reasons, it is my opinion the City of Indianapolis has not violated the 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: Ms. Samantha DeWester