



STATE OF INDIANA

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December 5, 2013

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

Re: Formal Complaint 13-FC-319; 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.*, 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 November 11, 2013.

BACKGROUND

Your complaint dated November 1, 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 30, 2013.

On or about October 30, 2013, you served upon the City a request for the following records:

Emails sent by Mr. Thomas Geisse to either Mayor Greg Ballard and/or DPR Director John Williams. The time frame for these communications would be April 16, 2013 thru June 16, 2013. I am also requesting emails sent by Mayor Ballard and/or DPR Director Williams to Mr. Thomas Geisse in the same time frame.

On October 30, 2013, the City responded that they were unable to locate any records responsive to your request based upon their perception your request was not reasonably particular.

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.

I am familiar with your previous requests regarding similar subject matter. You have been denied in the past due to reasonably particularity standards. As such, you have reached out to me informally for advice as to how to tailor your request with specificity. In fact, you forwarded this very request to me. I determined your request was reasonably particular based on case law and previous PAC opinions.

In due fairness, I also reached out to Ms. DeWester to determine the justification for the denial. She provided me with a missing piece of information in that the individual in question, Mr. Thomas Geisse, is not a City employee. I had erroneously concluded he was a City employee and indicated to you to name a specific sender and recipient and that it would be considered a reasonably sufficient request.

As Mr. Geisse is not a public employee, it may be difficult to locate records from an *unidentified email address*. This may seem like semantics; however, as you are probably aware, individuals do not always include their name in their email addresses. This Office sees all kinds of unique email addresses on a daily basis. So it is conceivable it would be difficult for the City to locate such records.

That being said, it is also my Opinion it does not appear the City made a reasonable effort to work with you to identify Mr. Geisse’s email address or at least inform you as to the reason why the information provided was not sufficient. I do not encourage agencies to use “reasonable particularity” as a catch-all for APRA denials (this is not to imply the City is an egregious offender of such a practice, as they are not).

So while I advised you that your request was reasonably particular, I was not informed Mr. Geisse was a private individual and therefore may be difficult to identify based on that particular fact. Conversely, I am disappointed the City, knowing your previous requests, did not solicit more information from you to resolve this conflict. Although it is not a requirement under the APRA, it is best practice for an agency to work with a constituent rather than issue a blanket statement of reasonable particularity insufficiency. This is especially true when previous requests have been denied.

I will stop short of saying the City did not make a good faith effort to work with you, because I am aware the City has a voluminous amount of records requests to which they must attend. At the same time, it would not take a significant amount of effort to resolve this matter.

RECOMMENDATION

I decline to conclusively find a violation on the part of the City; however, I suggest the City reach out to you to gather more background information which may assist them in locating the records. I do not think it necessary for you to resubmit a request in order for them to do so.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal stroke extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha DeWester