



STATE OF INDIANA

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March 25, 2013

Mr. Aaron B. Pratt
608 N. Norton Street
Marion, Indiana 46952

Re: Formal Complaint 13-FC-62; Alleged Violation of the Access to Public Records Act by the Marion Common Council

Dear Mr. Pratt:

This advisory opinion is in response to your formal complaint alleging the Marion Common Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Don Gallaway, Attorney, responded on behalf of the Council. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on February 6, 2013 you submitted a written request for records to the Council via the United States Postal Service ("USPS"). You requested an opportunity to inspect and copy the memoranda from various committees ("Committees") of the Council. A duplicate copy of the request was also submitted to the Clerk of the City of Marion. As of February 20, 2013, you have yet to receive any response from the Council to your request for records.

In response to your formal complaint, Mr. Gallaway advised that the Council does utilize Committees as part of its structure. The Committee meetings have always been properly noticed and open to the public. The past practice of the Committee chairs has been to issue verbal reports to the Council as a body; the Committees have not been preparing written memoranda from its meetings. It is the Council's contention that the verbal reports serve the purpose of the written memoranda. To find a violation of the ODL would be to observe form over substance.

The practice of the Council had been remedied and the Committees are now preparing written memoranda which are provided to the Clerk. Mr. Gallaway has spoken with you regarding this issue since you filed your formal complaint and is of the belief that the Council's actions have satisfied your initial request.

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 Council 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 Council’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. Here you submitted your written request for records to the Council via the USPS on February 7, 2013. Thus, it is my opinion that the Council acted contrary to the requirements of section 9(b) of the APRA by not acknowledging the receipt of your request within seven (7) days.

Under the Open Door Law (“ODL”), governing bodies that conduct meetings are required to keep memoranda. The ODL does not require that a governing body keep minutes; however if kept, minutes of a meeting must be open for inspection and copying under the APRA. *See* I.C. § 5-14-1.5-4(c). As for memoranda, the ODL specifically provides that the following shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under I.C. § 5-1.5-2-2.4. I.C. § 5-14-1.5-4(b).

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s proceedings. *See* I.C. § 5-14-1.5-4(c). The past practice of the Committees appointed by the Council was to have the Committee chair issue a verbal report to the Council as opposed to preparing written memoranda. Mr. Gallaway has advised that this practice has been remedied and the Committees are now preparing written memoranda which are provided to the Clerk. As the Council has amended its practice and informed you as such of its new procedure, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council acted contrary to the requirements of section 9(b) of the APRA in not responding to your request within seven (7) days of its receipt.

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: Don Gallaway