



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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May 15, 2013

Mr. Stephen Dean
WRTV6 News
1330 N. Meridian St.
Indianapolis, IN 46202

Re: Formal Complaint 13-FC-86; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Dean:

This is in response to your formal complaint alleging the City of Indianapolis violated the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Ms. Samantha DeWester, City Prosecutor and Public Access Counselor, responded on behalf of the City of Indianapolis Office of Corporation Counsel and the City of Indianapolis (the "City"). Her response is enclosed for your reference.

BACKGROUND

Your complaint alleges that the City violated the APRA by denying you access to public records or by failing to produce records you requested within a reasonable time, or by failing to respond to your request for a status update on your original request within a reasonable time. You sent a formal request for records to the City's Public Access Counselor dated January 16, 2013, in which you requested "any document or budget that spells out total travel budget for Mayor's office, including all support staff; Any document that covers the same time period for the prior year's budget; With regard to employees Sarah Taylor and David Taylor: all requests for reimbursement for any travel related expense (and all supporting documents), any credit card statements for any city issued/paid charge card, any document that requests reimbursement or booking of airline travel for city business, including flights for any relative, any document that requests reimbursement or booking of lodging for city business, including accommodations for any relative" for "the period covering June 1, 2012 through the present date." Your request also stated that "if any reimbursements or city payments for the city's



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Philadelphia event of July 2012 fall outside the date range listed above, we would ask that those expenses or requests also be included in the above request.”

Ms. Samantha Karn, Corporation Counsel and Public Access Counselor for the City, responded to your request in a letter dated January 18, 2013, informing you that the City had initiated a search for records responsive to your request. Ms. Karn also noted that responsive records would be examined to determine “whether they contain any material which by statute shall or may be withheld from public inspection and copying”, and that the City would notify you when this process has been completed.

Your complaint states that you “sent numerous emails” to the City’s Public Access Counselor “for inquiries on the City’s follow-up correspondence”, but that “the City’s complete lack of responsiveness necessitated filing this complaint” so that you could pursue “legal action to compel release of these public documents.” You filed your formal complaint on March 11, 2013, asserting that you were denied access to public records as of March 8, 2013. You also assert in your complaint that “[t]he City’s failure to even acknowledge an inquiry on these documents demonstrates that it has no intention of releasing these public documents.”

Ms. DeWester’s response on behalf of the City largely confirms the factual outline regarding your previous correspondence and request for records submitted to the City. Ms. DeWester notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time. Further, Ms. DeWester argues that the City has met its statutory obligations under the APRA in responding to your initial request via letter dated January 18, 2013. Ms. DeWester also states that you sent an email on March 7, 2013 requesting an update as to the status of your request before filing your complaint on March 11, 2013.

Ms. DeWester explains that that the City has a large volume of pending public records requests, and that after responsive records are found, the Office of Corporation Counsel for the City must then work with the City “to review any responsive records to determine if they contain items which shall or may be withheld by law”. Further, the Public Access Counselor for the City has changed during the pendency of your request. Ms. DeWester disputes your claim that the City “has no intention of releasing these documents,” and asserts that the City has been “hard at work to uncover any viable information” that would fulfill your request. For these reasons, Ms. DeWester argues that the time the City has taken in disclosing responsive records has been reasonable under the APRA.



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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. Accordingly, any person has the right to inspect and copy a public agency’s 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 by mail, email 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 response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the City received your request on January 16, 2013 and sent a written acknowledgment of your request on January 18, 2013. The City’s acknowledgement of your request was well within the time limitation imposed by the APRA.

The APRA does not require a public agency to provide a requestor with a specific date the search for records will be completed, or to provide a requestor with a status update regarding the search at specific, pre-determined time intervals. Because your March 7, 2013 email was merely a request for an update on the status of your initial request and not a new request for public records, the City had no obligation under the APRA to issue an additional written response within seven days. However, in keeping with the spirit and intent of the public policy behind the APRA, I would encourage the City to make every effort to respond to requests for status updates within a reasonable time.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. In accordance with section 3(b) of the APRA, the public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how extensive the process is to gather and redact the records, and whether the records must be reviewed by counsel and redacted to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe.

Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights



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secured by Section 3 of the APRA. I.C. §5-14-3-7(c). Thus, under section 7, the City should not permit employees to neglect their essential duties in order to respond to public records requests, but the City cannot simply ignore requests either, even when facing the high volume of pending public records requests and staffing changes described by Ms. DeWester. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Based on the information provided in the complaint and in the City's response, I cannot say that the City has acted contrary to either section 3(b) or section 7 of the APRA.

To apply these standards to the present situation, the City attributes the delay in producing the records you requested to the fact that the City has a large volume of pending public records requests and that the City's public access counselor has changed during the pendency of your request. Further, the City states that after responsive records are found, the Office of Corporation Counsel for the City must "review any responsive records to determine if they contain items which shall or may be withheld by law" before such records can be made available for your review. According to Ms. DeWester, the City is working to accommodate your request and will notify you as soon as records responsive to your request are available.

Given these facts, I cannot say that the City has violated the APRA by taking an unreasonably long time to produce records responsive to your request, or by denying you access to public records. I would note that the public access counselor has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-260*. I have not been advised whether you have received the information since the filing of your formal complaint. In my opinion, if the City produces records responsive to your request within the next thirty (30) days, the City will have met the reasonableness requirement under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City has not violated Section 3(b) of the APRA by not providing responsive records to you as of March 8, 2013. Further, it is my opinion that the City will have complied with requirement to produce records in a reasonable period of time under Section 3(b) of the APRA if the City produces responsive records within the next thirty (30) days.

Please contact me if I can be of additional assistance.



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Best regards,

Jennifer L. Jansen
Acting Public Access Counselor

Cc: Ms. Samantha DeWester, City Prosecutor and Public Access Counselor