



STATE OF INDIANA

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May 14, 2014

Mr. Eric P. Krieg
1938 Somerset Drive
Munster, IN 46321

Re: Formal Complaint 14-FC-82; Alleged Violation of the Access to Public Records Act by the City of Hammond

Dear Mr. Krieg,

This advisory opinion is in response to your formal complaint alleging the City of Hammond ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via their Law Department. The City's 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 April 15, 2014.

BACKGROUND

Your complaint dated April 15, 2014, alleges the City of Hammond violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about March 31, 2014, you submitted a request for public records to the City of Hammond Controller's Office which was received by the City on April 4, 2014. The City responded on April 8, 2014 denying the request stating they did not have the records you were seeking. Specifically, you sought records relating to the "Festival of the Lakes from 2010-2013."

You then reached out to the Indiana State Board of Accounts who indicated the Controller's Office should have custody of the records. The City's Law Department responded to your formal complaint arguing they do not maintain the records in the format in which they were sought.

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 Hammond 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 City indicates they do not keep the records in the form you requested them. They state they are maintained by fund. Furthermore, the Controller’s Office does not maintain bids for City services or other documentation you requested.

Your request was reasonably particular and specific enough so the City could search for, retrieve and produce the records you have sought. The City has discretion of the manner of maintenance of records as long as they keep them according to the local and county retention schedules or any other statute. The State Board of Accounts indicates they should have them; however, the operations regulated by that agency are outside the scope of this Office.

I am not familiar with the City’s festivals or how they are conducted, but if records exist relating to expenditures paid or vendors contracted, you are entitled to those records. Similarly, you cannot be expected to know exactly how records are maintained and by what name they are called. If financial records exist relating to the appropriation of funds dedicated to that festival, it is my opinion your request was sufficiently particular to give the City an idea of what you were looking for. If that is not the case and there was confusion over which records you are seeking, it is my expectation the City work with you to identify the exact records responsive to your request. I do not think the request was overly broad or ambiguous. If the records do not exist, they are under no obligation to create or produce them. The issue of the absence of those records, if required by the State Board of Accounts, is between that particular agency and the City of Hammond.

Instead of drawing a conclusion as to a violation of the Access to Public Records Act, I implore the City (who has been copied on this Opinion) to work with you in identifying the records you seek and producing them accordingly.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: City of Hammond Law Department