



# STATE OF INDIANA

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## OPINION OF THE PUBLIC ACCESS COUNSELOR

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**KAYLA MOODY,**

**Complainant**

v.

**CITY OF NEW ALBANY**

**Respondent**

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**17-FC-74**

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### ADVISORY OPINION

**May 16, 2017**

This advisory opinion is in response to the formal complaint alleging the City of New Albany (“City”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. The City has not responded despite an invitation to do so on April 7, 2017. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 31, 2017.

### BACKGROUND

The formal complaint dated March 31, 2017, alleges the City violated the APRA by failing to produce records in a reasonable amount of time and denying full access to records requested.

On January 17, 2017, the Complainant requested the personnel record for a New Albany Police Corporal, copies of all use of excessive force complaints filed from 2012 to 2017, the outcomes of those complaints, and audio recordings and witness statements from an October 7, 2016 incident for which the Police Corporal’s conduct is being investigated. The Police Chief responded to her request stating that he did not suspect any of her requests would be a problem and that he would forward her request to the City Attorney’s office. On January 24, 2017, the Complainant asked the Police Chief about her request, and he provided the Complainant with the phone number for the City Attorney’s office. The Complainant called the City Attorney on January 25, 2017, and left a message for the City Attorney,



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who was unavailable, with the city spokesperson. The Complainant received no response. The Complainant left a voicemail for the City Attorney on February 6, 2017, and received no response. The Complainant called the City Attorney again on February 21, 2017, and spoke with an office employee who said she would check on the request. The office employee called the Complainant the same day and said that the City Attorney would produce the records in one week. On February 28, 2017, The Complainant left the City Attorney a voicemail and received no response. As of March 31, Complainant had not received any records.

The Office of the Public Access Counselor notified the City Attorney of the formal complaint on April 7, 2017, and invited the City of New Albany to respond. Although the City did not respond to the Office of the Public Access Counselor's invitation, the Complainant reported to the Office of the Public Access Counselor on May 11, 2017, that the City had provided her with some of the records she requested, but not all.

## 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 Indiana Code § 5-14-3-1*. The City of New Albany is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*. If an agency receives a request for public records in writing, the agency may deny the request either in writing or facsimile, and the agency must provide both the specific "exemption or exemptions authorizing the withholding of all or part of the public record" and the name and title of "the person responsible for the denial." *See Indiana Code § 5-14-3-9(d)*.

The burden is on a public agency to produce records within a reasonable time. What constitutes a reasonable time is not defined by the statute, but is considered on a case by case basis. The City did not produce the requested records for at least ten weeks, and only after receiving notice of the formal complaint did the City produce some of the documents. This is an unreasonable amount of time to produce requested records.



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## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor to strongly recommend that the City either produce the remaining records requested or deny Complainant's request and provide the statutory exemption authorizing the withholding of the public records.

As a reminder to the City, Indiana Code § 5-14-5-5 provides that public agencies are to cooperate with the Public Access Counselor "in any investigation or proceeding under this chapter."

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt".

Public Access Counselor

Cc: Ms. Kayla Moody