



STATE OF INDIANA

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April 26, 2012

Ms. Kimberly Jeselskis
120 E. Market Street, Suite 1030
Indianapolis, Indiana 46204

Re: Informal Inquiry 12-INF-13; Reasonable Particularity

Dear Ms. Jeselskis:

This is in response to your informal inquiry regarding the City of Carmel's ("City") response to your request for records pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. Liberty L. Roberts, Attorney, responded on behalf of the City. Her response is enclosed for your reference. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

On January 10, 2012, you submitted a written request for records to the City's Department of Law for copies of the following records:

"All record from 2008 to the present showing an award of federal funds, federal grants, federal assistance, etc., to the Carmel Police Department."

On February 1, 2012, Mr. Haney responded in writing to your request and advised:

"Your request seeking "all records" over a five year period of time that show an award of "federal funds...etc." to the Carmel Police Department does not identify with reasonable particularity the record(s) you desire. It is therefore denied pursuant to I.C. 5-14-3-3(a)(1). Subject to the above, the Carmel Clerk Treasurer's Office may have a record of monies received by the City of Carmel. You may contact that office directly at 317-571-2414. The City reserves all of its rights as regards to the release of records pursuant to this request.

In response to your informal inquiry, Ms. Roberts advised Mr. Haney provided in his correspondence to you on February 1, 2012 that your request was too general and did

not meet the requirements of reasonable particularity as required by the APRA. Further, Mr. Haney advised that the Clerk-Treasurer may have records that are responsive to your request and provided you with the appropriate contact information. The APRA requires that a request for records be made with reasonable particularity. I.C. § 5-14-3-3(a)(1). The Public Access Counselor's Office has interpreted this provision to mean that the public agency must be able to ascertain the records the requestor is seeking in order for the request to be made with reasonable particularity. *See Opinions of the Public Access Counselor 10-FC-57 and 08-FC-176.* If an agency needs clarification regarding a request, the agency should contact the requestor for more specific information. *See Opinion of the Public Access Counselor 02-FC-13.*

As applicable here, the City did not believe that your request was made with reasonable particularity. The City Attorney's office did not maintain records related to federal monies received by the City or the Police Department. Mr. Haney attempted to assist you with your search by providing the respective contact information for the Clerk-Treasurer. After receiving Mr. Haney correspondence, it appears that you contacted the Clerk-Treasurer's Office and were provided with records that were potentially responsive to your request. Further, Ms. Liberty has attempted to contact you regarding your request and left a detailed message with you requesting that you return her call for clarification.

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 City 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 City'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 twenty-four 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 days of receipt, the request is deemed denied. *See I.C. § 5-14-3-9(b).* Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See I.C. § 5-14-3-9(c).* 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

The APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a)(1). "Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined that "when a public agency cannot ascertain what records a requester is seeking, the request likely has

not been made with reasonable particularity.” *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13*.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*.

In the City’s response to your original request, it provided that the request was not made with reasonable particularity and it was therefore denied pursuant to I.C. § 5-14-3-3(a)(1). As provided in prior advisory opinions, if an agency needs clarification of a request or believes the request is not reasonably particular, the agency’s proper response would be seek further clarification rather than denying the request. However, the City attempted to assist you with your search by advising that it was likely that the Clerk-Treasurer may have records that were responsive to your request and included the respective contact information for the Clerk-Treasurer. Ms. Liberty advised in response to your informal inquiry that the City Attorney’s Office, the entity to which you submitted your original request, does not maintain any records that were responsive to your request. Ms. Liberty further indicated that you had been in contact with the Clerk-Treasurer and she has attempted to contact you regarding the status of your request.

Although the City acted contrary to the APRA by denying your request for records due to the request not being made with reasonable particularity, its efforts in attempting to assist you with your search by providing you with the appropriate agency to submit your request and the agency’s contact information indicate that the City by no means intentionally violated the APRA. The City’s efforts to assist you with your search actually went beyond the requirements of the APRA when it provided further guidance to assist you with your request. As you have now received records from the Clerk-Treasurer that are responsive to your request and Ms. Liberty has attempted to correspond with you regarding the status of your request, I trust that this is in satisfaction of your inquiry.

If I can be of additional assistance, please do not hesitate to contact me.

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 "H".

Joseph B. Hoage
Public Access Counselor

cc: Liberty L. Roberts