



STATE OF INDIANA

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January 24, 2013

Mr. Don Gallaway
Corporate Counsel – City of Marion
301 S. Branson
Marion, Indiana 46952

Re: Informal Inquiry 13-INF-04; Formal Complaint 12-FC-349

Dear Mr. Gallaway:

This is in response to your informal inquiry regarding Formal Complaint 12-FC-349. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act (“APRA”), I.C. § 5-14-3-1 *et seq.*

On December 7, 2012, Mr. Richard P. Halfacre II filed a formal complaint with the Public Access Counselor Office’s against the City of Marion (“City”). On January 8, 2013, Advisory Opinion 12-FC-349 was issued, which opined that the City had violated section 9 of the APRA by failing to respond to Mr. Halfacre’s written request for records. You advise that the City was unaware of Mr. Halfacre’s formal complaint until it received a copy of the advisory opinion. You have now submitted a response on behalf of the City to the formal complaint and have requested an informal opinion as to whether the City would have violated the APRA if such a response had been filed.

BACKGROUND

In Mr. Halfacre’s complaint, he alleged that on June 28, 2012 and October 22, 2012, he submitted a written request for records to the City. On December 7, 2012, after not receiving any response from the City, Mr. Halfacre filed a formal complaint with the Public Access Counselor’s Office.

You have provided that Mr. Halfacre’s June 28, 2012 request was submitted to a former employee of the City. Further, the City has no record of receiving his October 22, 2012 request. Upon receipt of the advisory opinion 12-FC-349, Mr. Gallaway promptly submitted an inquiry to Mr. Halfacre, asking that he resubmit his request. Thereafter, Mr. Halfacre submitted his request directly to Mr. Gallaway. I infer from the City’s inquiry that the agency is either in the process of gathering all records that are responsive to Mr. Halfacre’s request or has already provided the records in question.

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).

If the City did not receive the requests that were submitted by Mr. Halfacre, it was not obligated to respond under the APRA. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not City received the request. Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the City received Mr. Halfacre’s record requests and failed to respond, it is my opinion that it acted contrary to the APRA. Alternatively, if the City never received Mr. Halfacre’s record requests, it did not violate the APRA by failing to respond to it.

Regardless, the City has now provided that upon being notified of Mr. Halfacre’s formal complaint that it promptly contacted Mr. Halfacre and received his written request for records. The City is now in the process of either compiling all information that is responsive to the request or has already provided the records in question. All of which I trust is in satisfaction of Mr. Halfacre’s original formal complaint.

Please let me know if I can be of any further assistance.

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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Richard P. Halfacre II