



# STATE OF INDIANA

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April 2, 2014

Councilman Brian Dickerson  
Elkhart City Council  
229 South Second Street  
Elkhart, Indiana 46516

*Re: Informal Inquiry 14-INF-09; City of Elkhart Public Records Requests*

Dear Councilman Dickerson,

This is in response to your informal inquiry regarding the handling of public records requests by the City of Elkhart ("City"). The City has responded via Mr. Jonathan A. Long, Esq., Deputy City Attorney. His response is enclosed for your review. 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"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

On March 5, 2014, you served public records request upon the Elkhart Police Department and the City of Elkhart Communication Center. You sent the request to several individuals, including the department heads and the Mayor.

On the same day of the request, the Deputy City Attorney sent you an acknowledgement of your request and properly asked for further clarification in regard to the Police Department records - which you then provided.

Prior to the acknowledgement regarding the Police records, however, you received an email from the City Mayor informing you he could not begin the process of searching for the Communication Center records, because you did not follow the established procedure of the City's public access request protocol.

You also contend you have not received any records per your request or have been given a time frame as to when you may expect the records. The City has provided emails indicating to you the search was completed and the records were available for inspection.

Those emails were sent on March 11, 2014 and again on March 14, 2014 and inquired as to your preference to receive them electronically or paper copies. After indicating you wanted them electronically, you did not receive the information. As to the Communication Center records, you had not received anything as of the date of your inquiry.

### 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 Elkhart is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable 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.

In regard to the City’s method of receiving requests, I have not seen any published policy regarding the City’s public access procedures; however, it appears the Mayor’s Office is the preferred centralized recipient of requests. All requests for agency information (other than the Police Department) are funneled to the Mayor’s administrative staff. They are then forwarded to the City’s legal department for review and then back to the Mayor’s Office for response. The justification for this protocol is the mainstreaming of the public access process to ensure appropriate responses and quality control.

The Mayor, as the chief executive of the City, may dictate how the City is run, and consequently, how public records requests are handled. As long as the SOP follows the APRA requirements, it is appropriate. Therefore, if there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed. *See* Ind. Code § 5-14-3-3(a)(2). That the Mayor would want to vet all public records requests in order to control the flow of information is not a violation of the APRA. Consequently, however, any failure to respond or acknowledge a request would fall on the Mayor’s Office and not on an individual agency.

While you take exception with the operating procedure, the issue is one of local governance and not under my purview. As long as you are receiving accurate information from the City in a timely manner, it matters not how the production of records is coordinated. I say this under the assumption the City has conspicuously published the SOP and it is not merely an internal mechanism only known to City staff and other select individuals. The access to public records form prescribed by the City does not make

reference to the requirement. If not done so already, the Mayor's Office should publish the policy in a clear and unambiguous manner.

As for the March 5, 2014 letter from the Mayor and the Communication Center's records, I cannot endorse the notion he did not receive actual or constructive notice of your public records request simply because he was merely carbon copied on the request and not named in the "To" recipient line. Again he references the 'administrative policy', however, I respectfully suggest he should consider the request directed to his administration and therefore is obligated to satisfy the request. Any administrative policy affecting public access should be conspicuously posted or published. This is to give the public (including council members) clear instruction on how to properly submit a public records request. In the future, now that you know the Mayor's preference, it may be beneficial to you to include the Mayor in the "To" recipient line to avoid confusion.

It appears the Deputy City Attorney did acknowledge and respond to the Police Department records and indicated they were available for inspection. Emails sent to you on March 11, 2014 and March 14, 2014 inquired as to your preference for them either electronically or printed. You have provided an email from March 13, 2014 indicating your preference. It seems likely there may a communication error causing confusion and I trust this Opinion will prompt the electronic release of those records to you.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Mr. Jonathan A. Long, Esq.