

July 19, 2006

Sent Via Facsimile

Mr. Lynn H. Molzan
Woollen Molzan & Partners, Inc.
600 Kentucky Avenue, Suite 101
Indianapolis, IN 46225

*Re: Informal Inquiry Response; Alleged Violation of the Access to Public Records Act
by the Indianapolis-Marion County Public Library*

Dear Mr. Molzan:

You filed a formal complaint with the Office of the Public Access Counselor on June 19, 2006 on behalf of Woollen Molzan & Partners, Inc. [hereinafter, "WMP"] against the Indianapolis-Marion County Public Library ("Library"). I assigned #06-FC-110 to the complaint. However, you lacked standing to bring a formal complaint under Indiana Code 5-14-5. Therefore, I am issuing this informal inquiry response, pursuant to Ind. Code 5-14-4-10(5).

The documents requested relate to the expansion and renovation of the Central Library in downtown Indianapolis. This project is currently the subject of several lawsuits. WMP is represented by Stuart & Branigan in at least two of the lawsuits WMP has filed against the Library. On May 8, 2006, Stuart & Branigan sent the Library a request for documents. The document request comprised seven enumerated categories of records.

You acknowledge that on May 15, 2006, counsel for the Library sent Stuart & Branigan a letter acknowledging receipt of the request. The Library stated in its response that it may have responsive records, and the Library was in the process of reviewing its files for the documents. The Library further stated that it anticipated providing an additional response to the request by May 25 to advise the requester of the Library's progress.

On May 25, the Library provided a letter stating that it had made progress but was still searching for responsive records. In addition, the Library advised that it would provide an

additional response by June 8. On June 8, the Library provided a four-page letter summarizing the records it produced that day. According to Mr. Quinn, 1,150 pages of documents were made available on that date. For some of the requests for contracts, the Library stated when it did not have any responsive documents, relating that information to the numbered request of May 8. In addition, the Library gave a short explanation why it did not have the requested document. The Library stated that it had made available every contract that it believed was responsive, but invited WMP to inform the Library if any more specific records were requested. Finally, the Library stated that it continued to review its files for copies of communications that constituted request #7.

You allege that the Library violated the Access to Public Records Act because, although the Library had issued a responsive letter within seven days, the Library failed to either produce the records or raise any objections or exceptions to the production of the records. Further, you contend that because the Library failed to raise any objections in writing to the production of the requested public records in its initial response, it has, after a delay of more than 37 days, waived the right to do so. You charge that the Library has been openly uncooperative with repeated requests to inspect public records associated with the project.

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). The Library is a public agency under the APRA. IC 5-14-3-2(1). A public agency that receives a request for records via U.S. Mail or facsimile is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). A response could be an acknowledgement that the agency has received the request, and some indication of how and when the agency intends to comply. The records should be produced within a reasonable time under the circumstances; there is no time set by the APRA regarding when responsive records must be produced.

If a public agency receives a request in writing, the public agency may deny the request if the denial is in writing and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

A public agency cannot state the exemption that applies to a particular record until it locates and reviews the record. It may not be possible for the public agency to locate and review within seven days every record that fits a particular category or meets a description. The Stuart & Branigan request laid out seven broad categories of records, although some of the requests asked specifically for named records within those categories. It is my opinion that the APRA does not require that the public agency identify all responsive records and either produce them or claim an exemption within the seven days for response set out in IC 5-14-3-9(b).

Hence, the Library has not waived its right to assert an exemption to the records produced in its June 8 production (although no exemption was asserted), or to the future production of records responsive to item #7, by virtue of its failure to identify records responsive to the requests within the seven day timeframe to respond under the APRA.

Although you do not explicitly assert that the records themselves were not produced within a reasonable period of time, you do complain that the Library's June 8 production of records was incomplete and knowingly failed to incorporate all of the public records requested.

I do not find any indication that the Library's production of records has been delayed an unreasonable amount of time. Assuming mailing time, the records responsive to the requests numbered 1-6 were provided in fewer than 30 days after the Library's receipt of the request. In addition, I would note that the Library has conformed to my oft-repeated guidance in matters involving producing voluminous records. The Library: 1) responded timely by acknowledging receipt of the request and stated a date within which the Library expected to update the requester on the progress of the request; 2) actually updated the requester on the promised date of May 25; 3) issued a second letter within the time promised in its previous progress report, and actually produced many of the documents; 4) stated in its production letter that it was still working to locate records responsive to the final item; 5) made some responsive records available prior to locating others. In addition, the June 8 letter clearly relates the records produced to the numbered items in the request. The Library clearly stated when no responsive records exist and why, i.e., the Library has not entered into a contract with the specified vendor. The Library invited the requester to specify other records if the requester believed some were not identified by the Library. The Library even produced a contract related to the project even though it did not meet the specifications of request #5, "in the interest of openness."

It is my opinion that the Library has not waived its right to assert any exemptions under the APRA. It is further my opinion that the Library's response of June 8 was complete and did not operate to deny Stuart & Branigan the records merely because the Library was still locating responsive records when it made available the bulk of the records requested. Moreover, the time to produce the records appears to be reasonable. The Library kept the requester apprised of the progress made by the Library. The Library complied with the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kevin Quinn