



STATE OF INDIANA

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June 24, 2011

Mr. Derek L. Morris
DOC # 104145
3038 West 850 South
Bunker Hill, IN 46914-9810

Re: Formal Complaint 11-FC-124; Alleged Violation of the Access to Public Records Act by the City of Indianapolis Office of Corporation Counsel

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis Office of Corporation Counsel (the "OCC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et seq.

BACKGROUND

In your complaint, you allege that the OCC failed to respond within seven days to your May 2, 2011, request for records, which was the second request you sent to the OCC for a list of police reports.

OCC Chief Deputy Corporation Counsel and Public Access Counselor Andrea Brandes responded to your complaint on behalf of OCC. Ms. Brandes states that you originally filed your request for police reports regarding 46 people on March 18, 2011. OCC responded to it that same day with an acknowledgment. On May 5th, you sent a letter to OCC requesting that OCC advise you of the cost of obtaining copies of responsive records. On May 18th, OCC informed you that it identified 346 pages of responsive records and that the associated copy costs would be \$13.84. On May 26th, you filed an amended request suggesting a mistake in the number of pages OCC identified. In that amended request, you also narrowed the class of records that you sought. OCC received that amended request on May 27th. On June 3rd, OCC informed you that it had 36 records available for you at a cost of \$1.36. Ms. Brandes argues that OCC responded to your requests in a timely manner and in accordance with the APRA.

ANALYSIS

Under the APRA, if a records 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. I.C. § 5-14-3-9(b). 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. Here, OCC responded to your March 18th request and May 27th amended request within seven days in accordance with subsection 9(b). Thus, in my opinion OCC's responses were timely. You claim that OCC did not respond to your May 2nd request (your second request for the same records you requested on March 18th) in a timely manner, but I note that the APRA does not require public agencies to respond repeatedly to duplicate records requests. *See Op. of the Public Access Counselor 10-FC-86*. If OCC responded to your March 18th request within the statutory period, the next question is whether OCC made responsive records available to you within a reasonable amount of time.

The APRA includes no firm deadlines for the actual production of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, Ms. Brandes notes that you submitted a list of 46 individuals for whom you sought police reports during various time periods. Within 60 days of that request, OCC identified 346 pages of responsive records and informed you of the cost for copies. After receiving your amended request, OCC responded to you in less than one week regarding the documents responsive to your narrowed criteria. Under such circumstances, it is my opinion that OCC did not act unreasonably. Under the APRA, a public agency shall "regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees." I.C. § 5-14-3-7(a). *See, e.g., Op. of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests). I trust that OCC will provide you with the records responsive to your amended request after receiving your payment for the associated copy costs.

CONCLUSION

For the foregoing reasons, it is my opinion that OCC did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Andrea L. Brandes