



STATE OF INDIANA

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June 8, 2009

Matt Reedy
2727 Citrus Lake Drive
City, Indiana 46902

Re: Formal Complaint 09-FC-123; Alleged Violation of the Access to Public Records Act by the City of Kokomo

Dear Mr. Reedy:

This advisory opinion is in response to your formal complaint alleging the City of Kokomo ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). The City's response to the complaint is enclosed for your reference. It is my opinion the City did not violate the APRA.

BACKGROUND

You allege that you have requested from the City copies of a number of records. You do not include a copy of your original request, but you include a copy of an April 27, 2009 electronic mail message wherein you indicate you limit your request to four categories: "copies of the 'proposed' map (prior to completion) that displayed the Walk of Excellence in its current location to the south of the creek," "the public notification and opportunity to comment on the Walk of Excellence project for the area I have requested to the south of the creek that would have been published in a newspaper of record during the planning stage," a record of in-kind donations the City received related to the project, and "any official City of Kokomo paperwork" related to closing an alley. You provide a copy of a number of electronic mail messages between Kokomo Parks and Recreation Department Superintendent John Martino and you. You filed the present complaint on May 11 (postmarked May 8), alleging the City violated the APRA by inviting you to search through the City's files to locate the records you requested.

The City responded to the complaint by letter dated May 19 from Corporation Counsel Derek Sublette. The City contends it received your request via US mail on April 24 and responded to the request on April 27, which is within the seven day response time provided in the APRA. The City contends it neither granted nor denied your request but indicated the matter was referred to Mr. Martino. Mr. Martino then contacted you by electronic mail and telephone on April 27. The City contends that Mr. Martino not only

agreed to produce all records you have requested but also offered to go through the records with you to ensure you receive the records you seek. The City contends it has not violated the APRA.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). 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. I.C. § 5-14-3-9(b). Here the City received your request on April 24 and responded to the request on April 27, well within the seven days allowed by the APRA. *See* I.C. § 5-14-3-9(b).

You do not make a specific allegation regarding how the City violated the APRA. Instead, you indicate, "I was told the information was 'voluminous' and that I should sit and go through all of the files to locate the 4 items they would be required to have on file." I interpret this statement to mean that you believe the City should locate the items for you. Upon reading the messages Mr. Martino and you exchanged, it is my understanding Mr. Martino has offered to allow you to inspect the entire contents of the City's files related to the specific matter to be sure you receive the records you have requested. To wit, he writes the following: "But I thought it would be more feasible for you to look through them personally to decide what you may be interested in. . . What you may want and what I may 'think' you want may be two different things."

This office has addressed similar issues in the past and has long held that an agency is not required to search and separate records on behalf of the requester:

In Opinion of the Public Access Counselor 01-FC-70, a record requestor sought copies of University telephone directories for academic years 1980 through 2001, and in particular, sought the portions of those directories that listed the "Office of Traffic and Safety," "Police," and "the like." The University responded that the directories were located in the University's library, and that the requestor was welcome to personally review and obtain the information there. According to this office, the University's response implied that it would not search for and compile the listings for the requestor. This office agreed that the University was not obligated to search the telephone directories itself to find the particular information sought.

In *Opinion of the Public Access Counselor 00-FC-15*, a record requestor sought from the Brownsburg Town Court the opportunity to inspect the full record of every case in which a person had been charged with a traffic offense, other than a non-moving violation, for the last calendar year. Holding that the request was reasonably particular, this office also stated that the "court is under no obligation under the APRA to search their records and segregate the moving and nonmoving offense files, only to provide you with an opportunity to review those files."

Opinion of the Public Access Counselor 04-FC-164

In *Opinion of the Public Access Counselor 04-FC-164*, Counselor Davis relied upon *Opinion 00-FC-15* and *Opinion 01-FC-70* to find that allowing a requestor to search an ordinance book to locate particular ordinances satisfied the requirements of the APRA.

I agree with Counselors O'Connor and Davis. In my opinion, the City has not denied you access to records. The City has made it clear the records will be made available to you for inspection. But nothing in the APRA requires the City search through those records for you and try to determine which records contained therein are the records you seek.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Derek Sublette, City of Kokomo