



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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May 1, 2013

Mr. Samuel L. Shaw
627 H Street
Bedford, Indiana 47421

Re: Formal Complaint 13-FC-123; Alleged Violation of the Access to Public Records Act by the City of Mitchell

Dear Mr. Shaw:

This advisory opinion is in response to your formal complaint alleging the City of Mitchell ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Mayor Gary L. Pruett responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on April 3, 2013, you submitted a written request to the City for a copy of the "grant that was established for the Mitchell Senior Citizen's Club located at 101 Tom Greene Avenue, Mitchell, Indiana." You further requested that the records be provided prior to Senior Club's meeting that was to be held on April 10, 2013. In your formal complaint you provide that the request was made seven days prior to the Senior Club's meeting in hopes that the Mayor would attend. As of April 22, 2013, the date you filed your formal complaint with the Public Access Counselor's office, you further allege that you have yet to receive any records responsive to your request.

In response to your formal complaint, Mayor Pruett advised that upon receipt of your request he inquired with his assistant, the Mitchell Clerk-Treasurer, a member of the Administrative Resources Administration, and the Office of Community and Rural Affairs regarding the process of locating any records that would be responsive to your request. The records were created approximately thirteen years ago and are not maintained electronically. On April 23, 2013, Mayor Pruett sent written correspondence where he outlined the process taken by the City in responding to your request and provided you with the information regarding the grant currently in his possession. Mayor Pruett further stated that upon his receipt of the full grant agreement, a copy would be made available. On April 25, 2013, you appeared in the City's offices and inspected the documents that had been received by the Administrative Resources

Administration. You were provided copies of the records you desired and stated that you were fully satisfied with the City's response to your request and that the agency had complied in the most expedient fashion possible.

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).

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, you submitted your initial request to the City on April 3, 2013 and included a request that all records be provided prior to April 10, 2013, the date of the Senior Club's meeting. Despite the City's best efforts, it was unable to meet the requested deadline as the records were not maintained electronically and the City was required to search within a number of departments prior to finding the requested records. Prior to the ultimate disclosure of records responsive to your request, the City communicated that its search was ongoing and provided certain information regarding the grant that was the subject of your request. On April 25, 2013, the City has provided that all records responsive to your request were provided, that you were fully satisfied with the City's response, and that the City had complied with your requests in the most expedient fashion possible. In light of all of these factors, it is my opinion that the City



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provided all records responsive to your request in a reasonable period of time as required by section 3(b) of the APRA.

CONCLUSION

Based on the foregoing, it is my opinion that the City provided all records responsive to your request in a reasonable period of time as required by section 3(b) of the APRA. .

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Mayor Gary L. Pruett