



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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July 28, 2015

Mr. Scott Clark  
311 Hauss Square, Room 119  
New Albany, IN 47150

*Re: Formal Complaint 15-FC-191; Alleged Violation of the Access to Public Records Act by the City of New Albany*

Dear Mr. Clark,

This advisory opinion is in response to your formal complaint, which alleges the City of New Albany violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Ms. Linda Moeller, Controller. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 21, 2015.

## **BACKGROUND**

Your complaint dated June 18, 2015 alleges the City of New Albany ("City") violated the Access to Public Records Act by failing to provide the records you requested.

On June 4, 2015, you sent a request for records to the New Albany Animal Control and Shelter. You requested copies of the statement of Income and Expenses for the years of 2012 and 2013; all Fund transactions reports showing revenue for 2012-2014; and checks or evidence of payment supporting the interlocutory agreement between the City and County. On June 10, 2015, you were advised the Animal Control does not maintain the records you requested and were advised to send your request to the City Controller. As of July 14, 2015 to my knowledge, you have not formally addressed any request to the Controller's Office.

## **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.



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Code § 5-14-3-1. The City of New Albany is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

This complaint alleges that no response has been received from the City regarding your records request. However, your request was sent to Animal Control and not the City Controller. Animal Control informed you they do not maintain the records you requested and to file a request with the Controller. Your request to the Controller does not seem to have taken place as of this time.

The APRA does not find a violation if the public agency does not possess the records requested, nor does it find a violation if the request was sent to the improper agency. Animal Control was not under any obligation under the APRA to forward your request to the Controller, however, out of courtesy, I encourage the City to release the records you seek based upon your request to Animal Control.

Legally, Animal Control properly informed you that your request would need to be sent to the Controller. Therefore, the City has met its obligation under the APRA, my recommendation above notwithstanding.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of New Albany has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

**Luke H. Britt**  
Public Access Counselor



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Cc: Ms. Linda Moeller