



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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April 1, 2013

Mr. Christopher P. Hartley
1724 E. 12th Street
Indianapolis, IN 46201

Re: Formal Complaint 13-FC-69; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Hartley:

This is in response to your formal complaint alleging the City of Indianapolis (“the City”) violated the Access to Public Records Act (“APRA”). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on the applicable provisions of the APRA, I.C. § 5-14-3-1 *et. seq.* Ms. Samantha DeWester, City Prosecutor and Public Access Counselor, responded on behalf of the City’s Office of Corporation Counsel. Her response is enclosed for your reference.

BACKGROUND

Your complaint appears to allege that the City¹ violated the APRA by failing to produce records you requested within a reasonable time, or by failing to respond to your request for a status update on your original request within a reasonable time. In an email sent to Ms. Samantha Karn, Corporation Counsel for the City, on January 15, 2013, you requested “a list of waived parking tickets processed between Jan. 1, 2012 and Dec. 31, 2012, including the license plate on the citation, the name of the individual cited, and the name of the official who waived the ticket”, as well as “any documentation as to why [the] tickets were waived.”

Ms. Zaida Maldonado-Prather responded to your request via email on January 22, 2013, informing you that the City had initiated a search of records responsive to your request.

¹ Your initial request for records was made via email to Samantha Karn, Corporation Counsel for the City of Indianapolis, but your formal complaint filed on February 27, 2013 lists the Indianapolis Metropolitan Police Department (“IMPD”) as the public agency denying access. Because you submitted your initial request for records to the Office of Corporation Counsel and not the IMPD, and because the response to your complaint was made on behalf of the Office of Corporation Counsel, I refer to the public agency you allege to have denied you access to public records as the City herein.



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Ms. Maldonado-Prather also noted the responsive records would be examined to determine “whether they contain any material which by statute must or may be withheld from public inspection and copying”, and that the City would notify you when this process has been completed.

You emailed Ms. Maldonado-Prather on Friday, February 22, 2013 requesting an update on the statute of your request. You then filed a formal complaint five (5) days later on Wednesday, February 27, 2013, noting that as of the filing of your complaint, you had not yet received any response to your February 22, 2013 email from the City.

Ms. DeWester’s response on behalf of the City confirms the factual outline regarding your previous correspondence and request for records submitted to the City. Ms. DeWester notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time. Further, Ms. DeWester notes that the City believes that it met its statutory obligations under the APRA in responding to your initial request. Ms. DeWester also states that as your February 22, 2013 email was a request for an update on the status of your initial request and thus was a “continuation of the first [r]equest submitted on January 15, 2013”, the City does not believe it had an obligation under the APRA to respond in to your second email in writing.

Ms. DeWester explains that your request is “extremely voluminous in nature” and “requires the redaction of private, privileged information before it can be released.” She also notes that the City has a large volume of pending public records requests, and that given the voluminous nature of the request at issue in your complaint and a second public records request you have pending with the City, the time the City has taken in disclosing responsive records has been reasonable under the APRA.

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. Accordingly, any person has the right to inspect and copy the Assessor’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). A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the



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request is delivered by mail, email, or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Here, the City did respond to your January 15, 2013 email on January 22, 2013, which is within the time limitation imposed by the APRA.

The APRA does not require a public agency to provide a requestor with a specific date the search for records will be completed, or to provide a requestor with a status update regarding the search at specific, pre-determined time intervals. Because your February 22, 2013 email was merely a request for an update on the status of your initial request and not a new request for public records, the City has no obligation under the APRA to issue an additional written response within seven days. However, in keeping with the spirit and intent of the public policy behind the APRA, I would encourage the City to make every effort to respond to requests for status updates within a reasonable time.

After acknowledgement of a request, the APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that record 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. 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. 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 APRA. I.C. § 5-14-3-7(c). Thus, under section 7, the City should not permit employees to neglect their essential duties in order to respond to public records requests, but the City cannot simply ignore requests either, even when facing the high volume of pending public records requests described by Ms. DeWester. Based on the information provided in the complaint and in the City's response, I cannot say that the City has acted contrary to section 7 of the APRA.

I note that your initial request was for "**a list** of waived parking tickets processed between Jan. 1, 2012 and Dec. 31, 2012, including the license plate on the citation, the name of the individual cited, and the name of the official who waived the ticket" (emphasis added). The APRA specifies that "a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute." *See* I.C. 5-14-3-3(f). If the City does not maintain a list like the



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one you describe and is not required to do so by statute, it is under no obligation to create such a list solely to fulfill your request.

To apply these standards to the present situation, the City attributes the delay in producing the records you requested to the fact that your request is "extremely voluminous in nature" and the responsive records must be redacted to avoid disclosure of confidential or private information before they can be made available for your review. Further, according to Ms. DeWester, the City is working to accommodate your request and will notify you as soon as the records responsive to your request are available. Given those facts, I cannot say that the City has violated the APRA by taking an unreasonably long time to produce records responsive to your request, or by denying you access to public records. In my opinion, if the City produces records responsive to your request within the next ninety (90) days, the City will have met the reasonableness requirement under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City has not violated Section 3(b) of the APRA by not providing responsive records to you as of February 22, 2013. Further, it is my opinion that the will have complied with requirements to produce records in a reasonable period of time under section 3(b) of the APRA if the City produces responsive records within the next ninety (90) days.

Please contact me if I can be of any additional assistance.

Best regards,

Jennifer L. Jansen
Acting Public Access Counselor

Cc: Ms. Samantha DeWester, City Prosecutor and Public Access Counselor