



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 15, 2011

Kevin Douglas Chrisman  
PO Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 11-FC-211; Alleged Violation of the Access to Public Records Act by the Office of Corporation Counsel*

Dear Mr. Chrisman:

This advisory opinion is in response to your formal complaint alleging the Office of Corporation Counsel ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the City. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a written request to the City for phone records from your court case. On August 11, 2011, the City provided that it had received your request for phone records from your court hearing on November 1, 2008. The City stated that due to the vague nature of your request, it was unable to locate any records responsive to it. The City requested that you provide further information so as to assist the City in identifying the records that were being sought.

In response to your formal complaint, the City provided it has received from you four public records requests regarding this issue. On June 17, 2011, the City received your first request that sought the records of two (2) warrants faxed on February 20, 2008 as well as "phone records of 2/20/2008." The City responded to your request on June 21, 2011 and provided that the Indianapolis Metropolitan Police Department was not the keeper of the warrant records and advised that you contact the court of origin. Because the initial request did not indicate what individual or agency sent the fax or the respective fax number, the City advised that the request was vague and did not meet the particularity requirements of the APRA.

On June 27, 2011 the City received your second request that again sought "phone records for 2/20/08 at 8:00 a.m. to 5:00 p.m." and referred to a fax sent to the Sheriff of

Williamsport, Indiana. The City responded to your second request on July 5, 2011, and again provided that no records could be found due to the vague nature of your request.

On July 14, 2011, the City received your third request, whereupon you provided:

“Reasonable particulars are to what was testified to in Court 11-10-08 it was testified to that there was a fax to Williamsport, IN 47993 at 3:15 on 2-20-2008 so that what I need because Police lied on witness stand 3 Police testified that they got fax at 3:15 p.m. 2-20-08 so I’m asking for 8:00 a.m. to 5:00 p.m. because I know that fax’s was sent at 2:15 p.m. not at 3:15 p.m. so I need phone records.”

The City responded to your third request on July 21, 2011 and again advised that no records could be found due to the vague nature of the request. The request still failed to identify information regarding the fax; in particular the identity of the agency or individual that sent the fax or what telephone number the fax was sent from.

On August 10, 2008 the City received your fourth request which reiterated the substance of your second and third request, but did not contain the additional information requested by the City. The City responded to your last request on August 11, 2011 and cited the need for additional information in order to fulfill your request.

#### 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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the City responded to each of your requests within the seven-day time period required by the APRA.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” *See* I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC § 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13*.

In documented correspondence provided by the City in response to your multiple requests, the City continually requested that you provide further detail so as to allow it to identify the records being sought. The building where you have alleged that the fax was sent from consists of twenty-five (25) stories and contains representative of nearly every City and County agency. Most, if not all agencies in the building, have one fax machine, and many have multiple fax machines. Further, each floor of the building contains numerous telephones, each with its own distinct number. As such, I can not find that the City violated the APRA in light of its continued attempts to clarify your vague requests.

Information that would prove beneficial to the City in order to respond to your request would be the identity of the person or agency who allegedly sent the records, the fax number that was used to send the records, and any other specific, pertinent information that might provide the City with additional identifiers in order to locate the records that are being sought. You may also consider filing a records request with the recipient of the alleged fax, the Williamsport, Indiana Sheriff, to determine if it has any records responsive to your request.

#### CONCLUSION

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

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom