



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

November 15, 2011

Mr. Scottie R. Edwards  
3038 W 850 S  
Bunker Hill, Indiana 46914

*Re: Formal Complaint 11-FC-267; Alleged Violation of the Access to Public Records Act by the City of Indianapolis, Office of Corporation Counsel*

Dear Mr. Edwards:

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

## BACKGROUND

In your formal complaint, you allege that you submitted a request in writing to the City for records regarding your arrest made by Lt. Douglass Scheffel on February 12, 2001, the towing of your car that occurred on the same date, and copies of prior correspondence between yourself and the Metropolitan Emergency Communications Agency. The City responded to your request within the timelines provided by the APRA and stated that it had no records that were responsive to your request.

In response to your formal complaint, Mr. Martz advised that the City did not have any records responsive to 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 your request within the timelines provided by the APRA.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. The City has provided that it has no records responsive to your request; as such it is my opinion that it has not acted contrary to the APRA.

I would note that this is the third formal complaint you have filed against a City of Indianapolis public agency for records specifically related to your arrest that occurred on February 12, 2001 and your vehicle that was towed on the same date. In *Opinion of the Public Access Counselor 11-FC-146*, you filed a complaint against a City agency that no longer existed. In *Opinion of the Public Access Counselor 11-FC-191*, the City agency did not receive your original records request, but noted that Metropolitan Emergency Communications Agency had provided to you all records that were responsive to your request. Here, the City has provided that it does not have any records that are responsive to your request. To the extent you believe that the City persists in its denial of access following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

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 style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Mark Mertz