



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 7, 2011

John Kelley
1600 South Eighth Street
Noblesville, Indiana 46060

Re: Formal Complaint 11-FC-280; Alleged Violation of the Access to Public Records Act by the City of Kokomo.

Dear Mr. Kelley:

This advisory opinion is in response to your formal complaint alleging the City of Kokomo ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lawrence McCormack, Corporation Counsel, responded to your formal complaint. His response is enclosed for your reference. I have granted your request for priority status pursuant to 62 Ind. Admin. Code 1-1-3.

BACKGROUND

In your formal complaint, you allege that on October 10, 2011, you filed a public records request with the City for its payroll rosters, including the name, department, job description and rate of pay from January 1, 2008 through September 1, 2011. On October 12, 2011, Mr. McCormack responded to your request on behalf of the City via e-mail. Mr. McCormack acknowledged and approved your request on behalf of the City. The City advised that it would charge \$.10 per page pursuant to I.C. § 5-14-3-1, but provided to not send payment until you were informed of the number of pages that the City would be providing in response to your request.

On October 19, 2011, upon not receiving any further correspondence from the City, you inquired with Mr. McCormack regarding the status of your request. Mr. McCormack responded on October 20, 2011, and provided the records were still being gathered. As of October 31, 2011, the date you filed your formal complaint with the Public Access Counselor, you have yet to receive any records that were responsive to your request.

In response to your formal complaint, Mr. McCormack provided the City acted in compliance with the APRA in responding to your request. The APRA provides that the records must be produced in a reasonable period of time, considering the facts and

circumstances of each request. The City received numerous public record requests each week and diligently attempted to produce the records in a reasonable period of time. Further, the City has responded to all of your previous requests in a timely manner. Your request was being processed by the Controller's office, which is also assigned the task of processing all accounts payable and receivables for the City, administering the City payroll, and maintaining compliance with federal, state, and local laws. In addition to the regular duties, the Controller's Office was busier than normal due to transitioning to the Department of Local Government Finance's Gateway system for the electronic submission of municipal budgets, which has been a labor-intensive process to comprehend and comply with the new requirements. The City has every intention of disclosing the records responsive to your request as soon as soon as they are compiled.

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 requests within the timelines provided by the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. 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. 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.*

The APRA *requires* public agencies 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). (emphasis added). A public agency shall “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); *See also Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *see also Opinion of the Public Access Counselor 11-FC-222* (thirteen days was not an unreasonable amount of time to respond to the request when the School maintained communication with the requestor and established that it took action on the request outside of the normal hours of operation.).

From the date of your initial request, October 10, 2011 to today’s date, approximately twenty-nine (29) days, or twenty-one (21) business days, have passed. You requested payroll rosters from the City for a forty-four (44) month span, ranging from January 1, 2008 through September 1, 2011. I am not aware from the information that is before how many employees the City retains or has retained since January 1, 2008. Upon receiving your request, the City responded to you within two business days and has continued to quickly respond to any inquiries that you have submitted regarding your request. While responding to your request and others submitted to the City, it is required to maintain the regular duties required of the office. I would note the additional responsibilities placed on the City Controller, the designated agency responding to your request, in light of the implementation of the Department of Local Government Finance’s Gateway system. While I am sympathetic to the City’s challenges in procuring the records you requested, in my opinion the City’s failure to produce any records that are responsive to your request by November 14, 2011 would be unreasonable under the APRA. *See Opinion of the Public Access Counselor 10-FC-282*. 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 Opinion of the Public Access Counselor 06-FC-184 and 08-FC-56 and 11-FC-172*. To the extent that the City is able to make periodic disclosures of the records that have been requested, I would encourage it to do so.

CONCLUSION

For the foregoing reasons, it is my opinion that the City should produce responsive records to your request on or before November 14, 2011. A delay beyond that date would be unreasonable pursuant to 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Lawrence McCormack