



STATE OF INDIANA

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February 2, 2012

Ms. Linda K. Treat
8126 E. 50th Street
Lawrence, Indiana 46216

Re: Formal Complaint 12-FC-01; Alleged Violation of the Access to Public Records Act by the City of Lawrence

Dear Ms. Treat:

This advisory opinion is in response to your formal complaint alleging the City of Lawrence ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of your formal complaint was forwarded to the City on January 5, 2012, but we have not yet received a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request on December 1, 2011 to James Gutting, City Attorney, for photographs taken by Robert Crouch (aka Comsulo) from 2008 to the present of all elected council members that served during that time and for any photographs of Lawrence Council member Stan Stephens and his police canine, Yank. On December 5, 2011, Candy Davis responded on behalf of the City and provided you with a Public Records Request Form and requested you complete and submit the form. While the e-mail response by Ms. Davis to your request is dated December 5, 2011, you allege that you did not receive the e-mail until December 23, 2011.

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 twenty-four 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 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. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. You allege that you did not receive the City's response to your December 1, 2011 request until December 23, 2011. Ms. Davis's response submitted via e-mail on behalf of the City is dated December 5, 2011. Accordingly, if the City did not respond to your written request within seven days of its receipt, it acted contrary to the APRA. However, if the City responded to your written request four days after it was received, it did not violate the APRA.

Under the APRA, an agency may require that public access requests are submitted on a particular form. Specifically, the APRA provides that "[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency." *See* I.C. § 5-14-3-3(a). The City notified you upon receiving your request that you would need to fill out the proper form in making your request for the respective photographs. Accordingly, it is my opinion that the City did not violate the APRA in its response to your request. I would encourage you to submit your request for records to the City on the proper form that has been provided; the City in turn after receiving your request on the proper form would be required to respond pursuant to the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA if it responded to your written request within seven days of its receipt. As to all other issues, 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: City of Lawrence