



STATE OF INDIANA

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November 6, 2014

Mr. Richard R. McQuaid
6910 Network Pl.
Indianapolis, IN 46278

Re: Formal Complaint 14-FC-235; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. McQuaid,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis ("City"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded to your complaint via Corporation Counsel, Ms. Samantha DeWester, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor October 7, 2014.

BACKGROUND

Your complaint dated September 28, 2014, alleges the Indianapolis Metropolitan Police Department violated the Access to Public Records Act (IC 5-14-3) by improperly denying you access to records.

On or about September 15, 2013, you submitted a public records request to the City seeking the emails of eleven named employees over a period of five months. On September 16, 2013, the City acknowledged your document request and suggested you narrow the scope of your request. You clarified your request the next day by providing the subject matter of the emails – communication regarding elements of the investigation of former IMPD Officer David Bisard.

In October 2013, the presiding judge in the Bisard case ordered the City not to release any emails regarding the case until the trial concluded. In June 2014, after the trial concluded, you confirmed you still sought the emails. It does not appear you were updated since that particular time and no records were provided to you.

The City responded to your complaint by arguing the size of your inquiry and the City's backlog of similar requests were reasons for the delay. The City acknowledges it took an unusual amount of time to respond, however, they contend it was reasonable under the circumstances.

ANALYSIS

The public policy of the APRA states that "a (p)roviding person 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 Ind. Code § 5-14-3-1. The City of Indianapolis is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy City's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

According to Ind. Code § 5-14-3-3(b) an agency must produce records within a reasonable time. The reasonable time standard is subjective and varies on a case-by-case basis, however, your request is not as large or complex as to justify a five-month waiting period with no response.

I have stated on various occasions it is the best practice of an agency to be in semi-regular contact with a requester if the records sought will take a significant time to produce. Not only is this consistent with the spirit of the APRA, it is also good customer service. I am in regular contact with the City of Indianapolis and I do recognize that the largest City in Indiana will naturally receive the largest amount of public records requests. Similarly, press coverage during a news cycle of a newsworthy incident will yield significant interest in relevant public documentation and an increase in requests of that nature.

The City of Indianapolis characteristically acts in accordance with the spirit of APRA by responding to requests within a reasonable time and updates requesters when an inquiry will take a significant amount of time. In this case, however, it is my Opinion the City did not follow their usual practice and should have provided the records to you in a more expeditious manner.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Indianapolis violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.