



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

April 22, 2014

Mr. Richard A. Sullivan
860 N. College Ave.
Indianapolis, IN 46202

Re: Formal Complaint 14-FC-57; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Sullivan,

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 provided a response to your complaint via Ms. Samantha DeWester, Esq. Her response is attached 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 on March 19, 2014.

BACKGROUND

Your complaint dated March 19, 2014 alleges the City of Indianapolis violated the Access to Public Records Act by not timely providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On February 24, 2014, you hand-delivered a request for public access to the Indianapolis Mayor's Office seeking the following records:

1. The name of the city agency that recently purchased or secured an option to purchase from Indianapolis Public Schools (or any other selling entity) the following parcels:
 - a. 846 North College Avenue
 - b. 822 North College Avenue
 - c. Any and all parcels that constitute what is commonly known as the IPS bus driver's parking lot.
2. All documents, including but not limited to email communications, including attached electronic files, purchase-offer agreements, meeting minutes; phone call records; surveys; photographs and any other documents relating to the purchase or

possible purchase of the abovementioned parcels by any City of Indianapolis entity.

3. All documents relating to the abovementioned parcels that mention:
 - a. Indianapolis Firefighters Credit Union
 - b. Indianapolis Professional Firefighters Local 416

The City timely acknowledged your request indicating they were seeking the records. That same day, Ms. DeWester emailed you an answer to the first item of the above request and denied the remainder as it was not considered reasonably particular.

You subsequently revised your request now seeking only the following:

1. All purchase-offer documents, purchase agreements, and meeting minutes relating to the purchase or possible purchase of the following parcels by the Department of Metropolitan Development:
 - a. 846 North College Avenue
 - b. 822 North College Avenue
 - c. Any and all parcels that constitute what is commonly known as the IPS bus driver's parking lot.

The City never responded to, nor acknowledged, your revised February 25, 2014 request. The City responded to your formal complaint arguing they were in the process of searching for records responsive to your February 25 revised complaint. They also contend they are not obligated to acknowledge a revised request, as it is a continuation of the first request and an ongoing dialogue. It should be noted both requests are dated February 25, 2014 adding to the confusion.

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 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). Accordingly, any person has the right to inspect and copy the 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).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

A request for public records should be “reasonably particular” so the public agency knows which records to produce and where to look for them. Ind. Code § 5-14-3-3(a)(1). I agree with the City that your first request was not reasonably particular, in that the documents sought do not have a timeframe associated with them; nor do the requests for communication have a named sender or recipient. Perhaps some of the documentation could be produced with relative ease, but it is a bit open-ended. Therefore, the City’s denial was appropriate under the circumstances.

Your second request is more finite. It specifies particular documents and identifies with specificity the documents sought. It appears the request meets the reasonable particularity standard. And although the City has stated they will search for records responsive to your request and produce them if they exist, they never acknowledged the legitimacy of your revised response. If there was an indication the communication between you and the City was indeed ongoing and continuing, I would not consider this problematic. I have no evidence before me, however, to suggest the City considered your second request sufficient.

I disagree with the City’s assertion they are under no affirmative obligation to respond to a revised request. If an amended public records inquiry is substantively different or narrowed to become a whole new request on its own, it should be acknowledged according to Ind. Code § 5-14-3-9(a) or (b). I find enough differentiation between your two requests to be sufficiently distinct.

This Office certainly recognizes the large amount of public records requests received by the City of Indianapolis. Even though the City is the most frequent responder to complaints to my Office, I rarely find their actions to be violative of public access considerations. I do believe the law requires them, however, to respond to each *distinct* request for access pursuant to Ind. Code § 5-14-3-9(a) or (b) – even if a prior request has been denied. As indicated in their response to your formal complaint, I trust the City will respond to your request for public records in an expeditious fashion.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the City of Indianapolis has violated the Access to Public Records Act by not responding to or acknowledging your second public records request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt

Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.