



STATE OF INDIANA

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October 12, 2011

Mr. Greg D. Sobin
P.O. Box 1111
Carlisle, Indiana 47388

Re: Formal Complaint 11-FC-241; Alleged Violation of the Access to Public Records Act by the City of Indianapolis Office of Corporation Counsel

Dear Mr. Sobin:

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.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the City. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege you have made a series of written records requests to the City beginning in July 2011 and that the only response you have received from the City advised that it was attempting to locate any records that were responsive to your request. You provide that you have sent \$9.10 to the City to cover the costs associated with your request. As of October 17, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have not received any records from the City.

In response to your formal complaint, Ms. Newsom acknowledged receiving your initial records request on July 13, 2011 which sought the booking photographs of sixteen (16) individuals. The City responded to your request in writing on July 15, 2011, acknowledging its receipt. On August 8, 2011, the City received a second public records request from you that sought police incident reports concerning twenty-six (26) individuals. The City responded to your request in writing on August 11, 2011, acknowledging its receipt. On August 17, 2011 and absent any particular request for any fees associated with your records request, the City received from you a check in the amount of \$9.10. The City operated under the belief that the check represented payment of a prior series of records requests that it had received from you that was the subject of Formal Complaint 11-FC-128. The costs associated with your prior records request had been waived and thus the check was returned to you.

On August 19, 2011, the City received a written request from you on the status of your records request and included the names of additional individuals for whom you sought police incident reports. The City did not respond to this request, as it considered it a continuation of your August 8, 2011 request. On August 24, 2011, the City received further correspondence from you, where you sought additional copies of booking photos. The City did not respond to this request as it considered the request a continuation of your July 13, 2011 request. On September 12, 2011, the City received your final letter, where you advised that you would be filing a formal complaint with the Public Access Counselor in light of not receiving any booking photos in response to your requests.

The City believes that it properly complied with the APRA in response to your continued records requests. The City presently has a large volume of pending public records requests, particularly those seeking records from the Indianapolis Metropolitan Police Department (“IMPD”). As records sought from the IMPD typically concern investigatory and other protected records, the records require additional processing time. The City is required to work with the particular agency that has possession of the records requested and then review the items for confidential information. Here, you have made multiple requests of the City for a variety of different records maintained by the IMPD, this along with your series of requests that were the subject of Formal Complaint 11-FC-128. The City anticipates the records being available as early as fifteen business days of their response to your formal complaint.

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.

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. Not only does the City have to collect the records in response to your request, the APRA *requires* the City 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). Section 7 of the APRA requires a public agency to 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). 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.*

Under the circumstances provided, it is my opinion that City has not acted unreasonably. Under the APRA, 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). *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 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests); *see also Opinion of the Public Access Counselor 11-FC-172* (four months was not an unreasonable amount of time to respond to thirteen expansive requests when the City made multiple disclosures of records pursuant to the request during the time period, all while handling a separate request which resulted in the production of over three-thousand pages of documents).

Here, you made two initial requests of the City for booking photos and incident reports that included approximately forty-two (42) separate records. Thereafter, each time you filed additional correspondence with the City, you made multiple additions to each of your original two requests. The City was required to communicate and work with the IMPD to facilitate the search for the records that had been requested, and upon production of the documents, the records were then reviewed in order to determine whether information was required to be withheld or redacted before making the information available. At the same time the City is responding to your request, it must maintain the regular duties required of the office. The City has also indicated that it currently is working on a large volume of pending public records requests, particularly those seeking records from the IMPD. As the City has provided that all records responsive to all of your pending requests would be made available within fifteen (15) days of responding to your formal complaint, I do not believe the City took an

unreasonable amount of time to collect, review, and reproduce the records in light of the breadth and ever expanding nature of your requests.

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 "Joe Hoage". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes Newsom