



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 20, 2015

Mr. Carlton E. Curry
11230 Winding Wood Court
Indianapolis, Indiana 46235

Re: Formal Complaint 15-FC-180; Alleged Violation of the Access to Public Records Act by the City of Lawrence Controller

Dear Mr. Curry,

This advisory opinion is in response to your formal complaint, which alleges the City of Lawrence Controller ("Controller") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* On June 29, 2015, Mr. Ron Hungerford, Controller responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 6, 2015.

BACKGROUND

On May 12, 2015, you requested via hand delivered letter, a "copy of Crowe Horwath Report supporting 2015 budget development for water and wastewater utility." You subsequently received a short document listing some historical trends related to the Wastewater utility prepared by Crowe Horwath. This was a document presented to the Utility Services Board in December 2014 in which Mr. Hungerford used to create the 2015 Wastewater Budget. You speculate there must be more Crowe Horwath prepared than what you received.

You point to evidence in which Crowe Horwath was paid a substantial sum in October 2014 to help with budget preparation, as well as an email with attachments that seems to point to budget information. The Controller argues these were not used to create the 2015 budget, but the *2014 budget* and no other report or documentation exists to further supplement the production of records.



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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 Lawrence Controller's Office 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 Controller's disclosable 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).

It appears as if the Controller has provided you with all of the records it has in its possession which is responsive to your request. To the extent any other records would exist, the Controller would be obligated to respond; however, a public agency does not have to create records in response to a request. Accordingly, a public agency is not obligated to produce records which do not exist at all. If you doubt the veracity of the Controller's statements, such a determination would be made by a Trier of fact.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Lawrence Controller's Office has not violated the Access to Public Records Act

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Ron Hungerford