



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 15, 2015

Nathaniel Heber
2450 Camellia Ln NE, Unit 1228
Atlanta, GA 30324

Re: Formal Complaint 15-FC-220; Alleged Violation of the Access to Public Records Act by the Office of Corporation Counsel for the City of Indianapolis and the Indianapolis Metropolitan Police Department

Dear Mr. Heber,

This advisory opinion is in response to your formal complaint alleging the Office of Corporation Counsel for the City of Indianapolis (“City”) and the Indianapolis Metropolitan Police Department (“IMPD”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Office has responded via Justin Paicley, Deputy City Prosecutor. His 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 on August 3, 2015.

BACKGROUND

On June 26, 2015 you requested all records related to a specific criminal case and an accompanying case report. However; you contend the Indianapolis Office of Corporation Counsel did not acknowledge your complaint.

On July 7, 2015 you contacted IMPD regarding your request. The City responded stating that your request was received by the Office. The City informed you later that day that due to an oversight by office staff, your acknowledgement was not issued in a timely manner.

On July 13, 2015 the City asked you to restate your request with reasonable particularity and also informed you that court files can be obtained by the court they are filed in.

On July 15, 2015 you submitted an amended request with additional detail. However, the City reasserted that your request lacked particularity. The City staff also informed you that certain records you are requesting are already in the report you obtained from IMPD.



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You contend that the IMPD report is not responsive to your request because it was provided before the arrest made in the case cited.

On August 17, the City responded to your complaint. The City raises questions of particularity, contending that only one record was identified with particularity and that the "remainder of the June Request specified no particular record beyond unnamed records 'related' to the case." The City also contends that the July request also lacked particularity.

You also question whether failure to respond with seven (7) days is a violation of the APRA.

Finally, you question whether IMPD violated the APRA by denying the request on the basis that the information had already been provided.

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 Indianapolis Metropolitan Police Department and the Office of Corporation Counsel are public agencies 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 Department's and the Office'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.

With regard to your first question, failure to acknowledge can be considered a violation of the APRA; however, this failure appears to be inadvertent. The City informed you that the error was an oversight by an intern and not an intentional violation of the APRA. Further, your request was subsequently acknowledged. Failure to acknowledge a request, regardless of good intentions, is a violation nonetheless.



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Your second and third questions are regarding reasonable particularity. Reasonable particularity is not defined under the APRA. If the public agency cannot determine what records are sought then your request is determined to lack reasonable particularity. A public agency is not required to fulfill a request that lacks specificity.

Typically, requests for "any or all" documents related to a certain matter is insufficient to meet standards of reasonable particularity, however, this should be determined on a case by case basis. You seek records related to named and identified case numbers and defendant names. It is reasonably clear that you asked for information associated with that specific named case. I do not think your request is so vague and ambiguous to fail on its face. A requester does not have to identify a record with pinpoint accuracy; only give a reasonable foothold for an agency to search.

That said, much of the information would ostensibly be in the custody of the Marion County Clerk who is the custodian of the records for the Marion County judiciary. Those files should be disclosable upon request. Additionally, the records you seek may fall into an investigatory record exception to disclosure. Investigatory records of law enforcement agencies are released at the sole discretion of the agency pursuant to Ind. Code § 5-14-3-3(b)(1). The City should have raised these considerations in its initial denial.

Regarding your fourth question, the APRA does not require a public agency to fulfill a request for records that have already been provided. Therefore, IMPD properly denied your request for records to the extent that the records requested had already been provided. If there was additional or amended information, it should have indicated as such and provided the updated information upon request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Office of Corporation Counsel and the Indianapolis Metropolitan Police Department have violated the Access to Public Records Act.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name and title.

Luke H. Britt
Public Access Counselor

Cc: Justin Paicely, Esq.