



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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November 2, 2015

Mr. A. Richard M. Blaiklock, Esq.
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202

Re: Formal Complaint 15-FC-287; Alleged Violation of the Access to Public Records Act and the Open Door Law by the City of Indianapolis (Priority)

Dear Mr. Blaiklock,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis (“City”) and the Office of Corporation Counsel (“Office”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* and the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.* The City has responded via Ms. April Schultheis, Esq., Public Access Counselor. 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 on October 23, 2015. This opinion has been granted priority status.

BACKGROUND

Your complaint dated October 21, 2015 alleges the City of Indianapolis and the Office of Corporation Counsel violated the Access to Public Records Act by failing to provide the records requested within a reasonable time. Your complaint also alleges the Office of Corporation Counsel violated the Open Door Law by improperly holding an executive session.

APRA Allegation

On September 15, 2015, you requested copies of documents related to Variance Petition 2015-DVI-047 (“Petition”), including all documents possessed at the eight City agencies, including inter-departmental communications and communications with persons outside the City. You also included several other records requests.



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On September 22, 2015, your request was acknowledged and you were informed the city had begun a search for documents.

On September 28, 2015 your associate, Mr. Jones, attempted to follow-up with the Office but did not receive a response. You contend a month with no status update or production of documents is outside of a reasonable timeframe for a records request response.

On October 28, 2015, the Office responded via Ms. April Schultheis, Esq., Public Access Counselor. The Office contends a month timeframe itself is not a violation of the APRA. Ms. Schultheis notes the records were requested from eight different City agencies, each of which has its own records to examine. Further, Ms. Schultheis notes the request may be overly broad so as to lack reasonable particularity.

Open Door Law Allegation

On October 7, 2015 the Metropolitan Development Committee held a pre-meeting. This meeting was open to the public. Mr. Jones attended this meeting. After the meeting had begun, a lawyer with the Office informed Committee members of Mr. Jones's presence. Because your office was involved in a lawsuit against the City related to the City's sign regulations, the meeting was terminated early. You contend the early termination of the meeting violated the Open Door Law by transforming the public meeting into an executive session.

Ms. Schultheis also denies the existence of an ODL violation. Mr. Schultheis contends the ODL "does not prohibit the governing body from changing or adding to its agenda, citing *Opinion of the Public Access Counselor 05-FC-229*. Further, Ms. Schultheis disputes there an executive session was held. She notes the meeting was open to the public and no official action took place.

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; Office of Corporation Counsel 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 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).



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Public agencies are required to produce records within a reasonable time after a request. See Ind. Code § 5-14-3-3(b). What constitutes a reasonable time can vary widely depending upon the circumstances surrounding a request. The size, volume and historical nature of a document can affect the time for production. After the acknowledgement of the request, the Department would have a “reasonable time” to produce the records you seek. See Ind. Code § 5-14-3-3(b). Your request appears voluminous and spread over several departments, but not so much so the City could not have updated you as to the status of their progress. Moreover, I have held several times in the past the best way to produce records from a voluminous request is in a piecemeal manner and not to wait until all records are compiled to produce them. Furthermore, I have encouraged agencies to periodically update a requestor with a status report on the progress of their request. Although not required by the APRA, it is good practice to do so. I understand the City was facing some personnel issues, however, public access should not suffer as a result.

While I do find that thirty (30) days may not be unreasonable in this case, I do believe the City should have updated you as to its progress. It is good customer service and would serve to relieve a requestor’s curiosity as to whether the City intends to satisfy a request eventually. Therefore, my recommendation is that the City immediately provides a progress report and any available documents to you as soon as possible. I will table this matter upon the condition this is effectuated within the next ten (10) business days.

As for the Open Door Law violation, you have not presented a factual set of circumstances alleging action contrary to law. You allege an improper executive session; however, you state no executive session has taken place. You take exception to discussions regarding the issue you site ceasing; however, you have not identified a closed-door meeting or upcoming executive session in violation of the ODL. You presuppose an executive session may be forthcoming based upon the circumstances, but there is no planned meeting scheduled and no discussions have taken place behind closed doors. You are correct; however, the matter at hand (proposed sign ordinances) is not an authorized executive session subject matter. If discussions take place in executive session or without a public meeting a violation would occur, however, the discussion (or an affirmative planned discussion) is a condition precedent to a violation.

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: Ms. April Schultheis, Esq.