



STATE OF INDIANA

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September 27, 2016

Ms. Kelly E. Feiock
2763 Mount Tabor Road
New Albany, Indiana 47150

-And-

Mr. Dennis E. Feiock
3620 Klemer Lane
New Albany, Indiana 47150

Re: Formal Complaint 16-FC-205; Alleged Violation of the Access to Public Records Act by the City of New Albany (Consolidated Opinion)

Dear Ms. Feiock and Mr. Feiock:

This advisory opinion is in response to your formal complaint(s) alleging the City of New Albany ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The City has responded via Mr. Shane Gibson, Esq., Corporate Counsel. His response has been enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on August 17, 2016 and August 25, 2016.

BACKGROUND

Your complaint(s) dated August 17, 2016 and August 25, 2016, alleges the City of New Albany was non-responsive as to two (2) of your public records requests.

On August 8, 2015, you requested a copy of a funding grant for construction of an identified stretch of city property. The Building Commissioner's office has sent you documents which were not part of your request. On August 15, 2016, you requested a different set of documents and have not received any response at all.

The City responded to your complaint by first arguing that your August 15, 2016 request was for prospective materials which may or may not exist, specifically items that may be presented at a future public meeting regarding a project. As to the August 8, 2016 request, the City denies any document

identified as a “funding grant” and the materials you sent were the only ones ostensibly responsive to that request.

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 Indiana Code § 5-14-3-1*. The City of New Albany is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. 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 Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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.

Your August 15, 2016 request is not unusual. Typically, requesters will ask for materials to be presented at a board meeting in the form of a “board packet”. Whether this exists varies from meeting to meeting. In any case, you are attaching a future condition precedent standard to a record which may or may not be shared at an upcoming meeting. If there is no set “board packet”, then you must wait until after a meeting to request materials.

Indiana Code § 5-14-3-3(b)(1) requires a requestor to submit a public records request with reasonable particularity. This term is not defined in the APRA and can very well differ based on the situation, the agency, and the records involved. Your request has not identified a particular document, but rather “any and all” information which would be shared at an upcoming meeting.

The City should be mindful, however, that even a denial requires a written response and acknowledgement. *See Indiana Code § 5-14-3-9(d)(2)*.

As to your August 8, 2016 request, from the information provided it appears as if a document title ‘funding grant’ does not exist. Instead, the City provided you with documentation it believes best fits your request. An agency does not have to create a document which does not already exist. Therefore, if the documents you received are the only ones in existence which may match your query, the agency has satisfied the request.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Shane Gibson, Esq.