

September 25, 2006

Sent Via Facsimile

Jeff Kovaleski
Managing Editor
Kokomo Tribune
300 N. Union Street
Kokomo, IN 46901

Re: Formal Complaint 06-FC-150; Alleged Violation of the Access to Public Records Act by the Kokomo City Controller

Dear Mr. Kovaleski:

This is in response to your formal complaint alleging that Kokomo City Controller (“City”) violated the Access to Public Records Act by failing to disclose public records. I find that the City violated the Access to Public Records Act by failing to produce records in a reasonable time.

BACKGROUND

You alleged in your formal complaint that on June 5, 2006 the *Kokomo Tribune* asked the City for any expenditures billed to the City for travel by Mayor Matt McKillip from May 1 through June 4, 2006, to include invoices, receipts and credit card billing. The documentation that you sent shows that the City wrote the *Kokomo Tribune* an e-mail on June 5 to indicate it would grant the request, and would gather the information as soon as possible.

The *Kokomo Tribune* sent the City an e-mail on August 10 asking for information regarding when the information would be available. From the message, it appears that the records were not produced sooner because Mayor McKillip had not yet received credit card statements and submitted the claims to the Controller’s office. On August 23, the City wrote the *Kokomo Tribune* an e-mail setting out the hotel, meal and parking expense for a trip to Braga, but did not otherwise indicate when documentation would be provided. You filed your formal

complaint on August 24. You allege that the Mayor provided the documents you requested to a competing media outlet sometime during the week of August 14 and August 18, but as of August 24, you were still awaiting copies of the claims and invoices.

I sent a copy of your complaint to the City. Counsel to the City Alan D. Wilson wrote a letter in response, a copy of which is enclosed for your reference. In response to your allegation that the Mayor had provided the documents to another media outlet, the City stated that the Controller played no part in releasing any information to a competing newspaper because he was out of the office. As of the date of the responsive letter, September 11, the City alleges that it has now provided you with the documents.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency that receives a request via hand-delivery is required to issue a response within twenty-four hours of receipt, or the request is deemed denied. IC 5-14-3-9(a). The response may be an acknowledgment that the agency has received the request, and a statement of how and when the agency intends to comply. The records, if available, could be produced with the agency's response. However, the public agency may need additional time to locate responsive records, review them, and make copies. There are no provisions in the APRA setting out when records must be produced. Hence, this office has advised public agencies that they should produce records within a reasonable period of time under the facts and circumstances.

If a public agency does not have responsive records, the public agency should so state. A public agency is not required to produce records that have not yet been created.

The City responded timely by sending you an e-mail acknowledging receipt of your records request on the same day of your request. At that time, the City could have informed you that no records yet existed that were responsive to your request. In any event, the City provided the information you requested on August 23, but not the supporting documentation in the form of invoices and claims. It is not clear when the records became available, nor is it clear whether the City did make them available to the competing newspaper. The City's response does not fully respond to the allegation that the records had been given to another newspaper the week of August 14 through 18. Rather, the City states merely that the City Controller could not have played a part in any disclosure since the Controller was out of the office during that week.

You have confirmed that the City has now disclosed the documents that you requested. Although the City has now disclosed the documents, I find that the City should have disclosed the records when they became available, but failed to do so.

CONCLUSION

For the foregoing reasons, I find that the City of Kokomo Controller's Office did not produce the records you requested within a reasonable period of time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Alan D. Wilson