



# STATE OF INDIANA

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September 28, 2009

Ms. Sharon L. King  
908 Carriage House Court  
Jeffersonville, Indiana 47130

*Re: Formal Complaint 09-FC-194; Alleged Violation of the Access to Public Records Act by the City of Jeffersonville, Indiana*

Dear Ms. King:

This advisory opinion is in response to your formal complaint alleging the City of Jeffersonville, Indiana ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by failing to produce records responsive to your request within a reasonable amount of time. For the following reasons, my opinion is that the City failed to produce the requested records within a reasonable amount of time.

## BACKGROUND

In your complaint, you allege that on June 23, 2009, you submitted a written request for access to public records to the Office of Clerk Treasurer of the City. On July 1, 2009, Clerk Treasurer Peggy Wilder responded by requesting that you supply time periods for the records you sought. Ms. Wilder further stated that her office had already begun to assemble records in an effort to ensure that her request for a specific time period did not delay your receiving the records. On July 3, 2009, you responded to Ms. Wilder's letter by narrowing the timeframe for the records you sought to the period of January 1, 2006 to the present. As of August 25, 2009, the City had neither provided you with any documents responsive to your request nor cited a reason for its failure to do so.

My assistant forwarded a copy of your complaint to the City on August 27, 2009. As of the date of this opinion, the City did not respond to your complaint. Consequently, the following analysis is based upon the information presented in your complaint.

## 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."

I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a). The City is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are exempt under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

You made your initial records request on June 23, 2009. The City received your letter and responded to your request within seven (7) days as required by the APRA, but it has failed to produce your requested records for more than two months without explanation. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Because the City has neither given a reason for its delay nor cited an exemption from the APRA that would permit it to withhold the documents subject to your request, it is my opinion that the City has failed to produce its responsive records within a reasonable amount of time.

Considering the City's apparent willingness to produce the records subject to your request, it appears as though this issue could have been avoided through more effective communication. This office has often suggested that a public agency should make portions of a production available from time to time when voluminous documents are being reviewed for disclosure. An agency's willingness to release documents as they become available demonstrates its good faith efforts to comply with the public access request. *See Opinion of the Public Access Counselor 06-FC-184 and 07-FC-268; Office*

*of the Public Access Counselor Informal Inquiry Response May 10, 2006.* I urge the City to provide you with any responsive records as soon as is reasonable and practical.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City has taken an unreasonable amount of time to provide you with the records but has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

Cc: Peggy Wilder, Clerk Treasurer, City of Jeffersonville