



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

December 7, 2009

Mr. Warren G. Patitz  
8160 Fishback Road  
Indianapolis, IN 46278

*Re: Formal Complaint 09-FC-258; Alleged Violation of the Access to Public Records Act by the City of Indianapolis*

Dear Mr. Patitz:

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

In your complaint, you allege that the City verbally denied you access to an "IACC board business communication regarding email notice sent to board secretary Erin Pratt from board member David Horth identifying his anticipated meeting absence on September 9<sup>th</sup>, 2009." You enclosed a letter dated October 7, 2009, in which you requested access to said record. On October 13, 2009, the City's chief deputy corporation counsel and public access counselor, Samantha Karn, responded to your letter. Ms. Karn replied by acknowledging the receipt of your request on October 12<sup>th</sup>. She also informed you that the City had "initiated a search of its public records to identify and collect those records, if any, which are responsive to your request," and that the City would inform you when that task was completed.

Ms. Karn's response to your complaint is enclosed for your review. Ms. Karn claims that the City never denied your request. She also notes that the City has gathered the applicable documents and is prepared to mail them to you without charge.

## 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 does not contest that it is 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 records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

Under the APRA, an agency’s failure to respond to a written request within seven (7) days constitutes a denial of access. I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, it appears the City responded to your request in accordance with the APRA.

Nothing in the APRA indicates that an agency’s failure to provide a requester with “instant access” to requested records constitutes a denial of access. “It is the responsibility of the public agency to *respond* to requests for access to public records within a specified time period. The APRA does not set any time periods for *producing* public records, merely for responding to the request.” *Opinion of the Public Access Counselor 02-FC-09* (O’Connor; advising that an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added). A public agency is required 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). Former public access counselors and I have opined that records must be produced within a reasonable period of time based on the relevant facts and circumstances. It is my understanding that the City is prepared to make the requested record available to you. I trust this resolves your complaint.

## CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Samantha Karn, City of Indianapolis