



STATE OF INDIANA

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December 30, 2009

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

Re: Formal Complaint 09-FC-280; Alleged Violation of the Access to Public Records Act by the Department of Public Safety for the City of Indianapolis

Dear Mr. Patitz:

This advisory opinion is in response to your formal complaint alleging the Department of Public Safety of 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's Department of Public Safety violated the APRA by failing to produce records in response to your request. On November 2, 2009, you submitted a request to the City for access to "[a]ll correspondence to/from acting safety director Mark Renner that discussed the meeting regarding Indianapolis Animal Care and Control (IACC) at the Humane Society of Indianapolis on 7/25/09" and "[a]ll correspondence to/from Angela Mansfield that discussed IACC."

On November 5, 2009, the City's Chief Deputy Corporation Counsel and Public Access Counselor Samantha S. Karn responded to your request via a letter. Ms. Karn informed you that the City has initiated a search of its public records to identify and collect those records, if any, which are responsive to your request. The City would thereafter inspect all responsive records to determine whether they contain any material which by statute shall or may be withheld. Ms. Karn wrote that the City would notify you when these tasks were completed. She further noted that you were free to contact her in the interim.

When you filed this complaint on November 25, 2009, the City had not yet produced the records you seek. You believe that the City's failure to produce the records to you by that time violated the APRA.

ANALYSIS

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, the City responded to your request in writing within three (3) days, which complied with the APRA.

Based on Ms. Karn's November 5, 2009, letter to you, the City has not denied your request. Thus, it appears that you are alleging that the City violated the APRA by failing to produce the records to you before November 25, 2009, which was the day you filed your complaint with this office. 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.

Here, your request appears to seek voluminous records from multiple email accounts concerning specific subject matter. Moreover, the APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). Considering the nature of your request and the time necessary to procure and prepare responsive records, I do not believe that the City's failure to produce the records to you by November 25th was unreasonable. However, the ultimate 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*. Consequently, an additional delay by the City would, in my opinion, not be reasonable. To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA. However, an additional delay by the City would likely be unreasonable. I encourage the City to produce all responsive records to you as soon as is practicable.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Mark Renner, City of Indianapolis