



# STATE OF INDIANA

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June 4, 2010

Mr. Todd L. Church  
515 Meredith St.  
Washington, IN 47501

*Re: Formal Complaint 10-FC-110; Alleged Violation of the Access to Public Records Act by the City of Washington*

Dear Mr. Church:

This advisory opinion is in response to your formal complaint alleging the City of Washington (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. A copy of City's response to your complaint is enclosed.

## BACKGROUND

In your complaint, you allege on April 6, 2010, you submitted a request for records regarding an invoice that the City received from a law firm. The invoice concerned work performed by the law firm at the request of the mayor of Washington (the "Mayor"). The City initially responded to your written request within "a few days," but you did not receive an official denial from the City until twenty-seven (27) days after you submitted your request.

My office forwarded a copy of your complaint to City. Attorney Jeffrey R. Norris responded on its behalf. Mr. Norris states that you appear to be requesting disclosure of legal research that was requested by the Mayor and approved by Mr. Norris in his capacity as the City's attorney. The legal research concerned a possible insubordination issue regarding a City employee. Mr. Norris claims the research is except from disclosure under the APRA as attorney-client privileged communications, attorney work product, and deliberative materials exceptions to the APRA.

## ANALYSIS

The public policy of the APRA states, "[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. The City is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy City’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the City denied your request to access records related to a law firm’s work on behalf of the Mayor. Under the APRA, one category of confidential public records consists of those records declared confidential by state statute. *See* I.C. §5-14-3-4(a)(1). Indiana Code § 34-46-3-1 provides a statutory privilege regarding attorney and client communications. Indiana courts have also recognized the confidentiality of such communications:

The privilege provides that when an attorney is consulted on business within the scope of his profession, the communications on the subject between him and his client should be treated as confidential. The privilege applies to all communications to an attorney for the purpose of obtaining professional legal advice or aid regarding the client’s rights and liabilities.

*Hueck v. State*, 590 N.E.2d 581, 584. (Citations omitted.) “Information subject to the attorney client privilege retains its privileged character until the client has consented to its disclosure.” *Mayberry v. State*, 670 N.E.2d 1262, 1267 (Ind. 1996), *citing* *Key v. State*, 132 N.E.2d 143, 145 (Ind. 1956). Moreover, the Indiana Court of Appeals has held that government agencies may rely on the attorney-client privilege when they communicate with their attorneys on business within the scope of the attorney’s profession. *Board of Trustees of Public Employees Retirement Fund of Indiana v. Morley*, 580 N.E.2d 371 (Ind. Ct. App. 1991). Therefore, the City does not violate the APRA when it withholds from disclosure information that is subject to the attorney client privilege.

Moreover, pursuant to I.C. §5-14-3-4(b)(2) a public agency has the discretion to withhold a record that is the work product of an attorney representing a public agency:

“Work product of an attorney” means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney’s:

- (1) notes and statements taken during interviews of prospective witnesses; and
- (2) ***legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney’s opinions, theories, or conclusions.***

I.C. §5-14-3-2(p) (emphasis added). Therefore, if the records you sought constitute the work product of an attorney, the City acted within its discretion when it denied your request for access to them.

## CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA by denying your request for access to attorney-client privileged information or records subject to the attorney work product doctrine.

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: Jeffrey R. Norris