



STATE OF INDIANA

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July 7, 2010

Mr. Edward T. Treacy
148 East Market Street
Indianapolis, IN 46204

*Re: Formal Complaint 10-FC-141; Alleged Violation of the Access to
Public Records Act by the City of Beech Grove*

Dear Mr. Treacy:

This advisory opinion is in response to your formal complaint alleging the City of Beech Grove (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the City, but as of today we have not yet received a response.

BACKGROUND

In your complaint, you allege that you hand-delivered a public records request to the City's mayor on March 23, 2010. The next day, the City's clerk-treasurer sent you a written acknowledgement of the request and promised that responsive records would be provided. The clerk-treasurer also promised to provide you with an update and estimated copy fees by April 9th. You did not receive such an update, so you attempted to contact the clerk-treasurer several times since April 9th. During the one conversation that you held with the clerk-treasurer over the phone, she stated that she had emailed an update and an estimate of copy fees but was unable to inform you of the date of that update or to resend the email. As of the date of your complaint, more than ten (10) weeks had passed since the date of your request, and the clerk-treasurer's update is two months overdue.

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. The City 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 City's public records

during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable 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). The APRA does not require public agencies to *produce* records within seven (7) days; rather, it requires a *response*. 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.

The APRA does not prescribe deadlines regarding the production of public records. However, 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.

The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Because the City has not cited any reason for its failure to either produce responsive records or cite a legal basis for withholding them, it is my opinion that the City has failed to produce your records within a reasonable period of time. I encourage the City to either produce all responsive records or cite to an exception in Section 4 of the APRA that authorizes the City to withhold the records.

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 has failed to produce your requested records within a reasonable period of time.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Sarah Kincaid (via electronic mail)