



STATE OF INDIANA

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October 14, 2010

Ms. Nancy Garbrecht
6170 Joliet Rd., Suite 200
Countryside, IL 60525

*Re: Formal Complaint 10-FC-209; Alleged Violation of the Access to
Public Records Act by the City of Elkhart*

Dear Ms. Garbrecht:

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

BACKGROUND

In your complaint, you allege that on June 16, 2010, you sent an email request to the City seeking records regarding the paving of several roads. Street Commissioner Marty Morgan responded to your request on Thursday, July 22nd. At that time, he informed you that he would have the information you requested by the middle of the next week. As of September 1st, you had not yet received the records, so you sent Mr. Morgan another email reminding him of your request. As of September 14th, you had still not received a response.

In response to your complaint, Mr. Morgan states that he emailed you on September 16th to inform you that the records you requested were ready to be picked up. Mr. Morgan says that you have already picked up the records, and adds that he responded to questions from your office regarding that arose after your office reviewed the records.

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 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 otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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). 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.*

Here, the City does not explain why it required from June 16th to September 16th to produce the records you requested. Consequently, it is my opinion that the City has not met its burden of proof to demonstrate that it released the records within a reasonable amount of time. I understand that the City has now released all responsive records to you. I appreciate the City doing so and trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the City has failed to demonstrate that it released records within a reasonable amount of time. The City has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Commissioner Marty Morgan