



# STATE OF INDIANA

**MITCHELL E. DANIELS, JR., Governor**

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December 10, 2010

Mr. Edwin Locke  
5318 Shadow Wood Ct.  
Indianapolis, IN 46254

*Re: Formal Complaint 10-FC-282; Alleged Violation of the Access to Public Records Act by the City of Indianapolis*

Dear Mr. Locke:

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

## BACKGROUND

According to your complaint, on August 17, 2010, you submitted a request for access to City records. Specifically, you requested correspondence during February and March of 2009 between Thomas Geisse and several City employees. The next day, Chief Deputy Corporation Counsel Andrea Brandes sent you a response acknowledging receipt of your request and informing you that the City had initiated a search of its records and would notify you once any responsive, disclosable records were available. After you received no additional response, you sent the City letters on October 3rd and October 10th inquiring about the status of your request. You claim that as of November 9th, you had not received an additional response.

My office forwarded a copy of your complaint to the City. In response, Ms. Brandes states that the City employees subject to your request are employed by both the Department of Parks and Recreation ("DPR") and the Department of Metropolitan Development ("DMD"). She says that the City timely acknowledged your request via its August 18th letter. Ms. Brandes communicated with you in the interim as she attempted to obtain an update on the status of your request from the two City agencies. The agencies have advised Ms. Brandes that their searches for records are nearly complete and that Ms. Brandes' office can review the records soon. Ms. Brandes anticipates that responsive records may be available for your review as early as December 20th. She adds that while DPR and DMD acknowledge that the search for records has been lengthy, the records at issue involve two separate agencies of the City, several employees, and

both hard copies and electronic versions of correspondence. Further, your request may have failed to identify the records you sought with the particularity required by section 3 of the APRA. She argues that the City has acted reasonably and notes that at no time has either agency denied your request.

## 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 does not contest that it is a “public agency” under 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 public records are excepted from disclosure as 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). 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. Here, the City responded to your written request and acknowledged it the next day in accordance with the APRA.

Regarding your allegations that the City did not produce the records you requested in a timely fashion, there are no prescribed timeframes when the records must be physically 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.*

In arguing that it acted reasonably, the City cites to the breadth of your request and the fact that it involved two City agencies, several employees, and a search of both paper and electronic records. Ms. Brandes anticipates that your records may be available by December 20th. By then, four months will have passed since you first made your request. I am sympathetic to the City’s challenges in procuring the records you requested

from multiple agencies, employees, and formats, but in my opinion, a delay beyond December 20th would be unreasonable under the APRA.

I trust the City will release responsive records to you as soon as practicable. 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 I.C. § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City should produce responsive records to you on or before December 20, 2010. A delay beyond that date would not be reasonable under the APRA.

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: Andrea L. Brandes