



STATE OF INDIANA

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January 10, 2011

Mr. Jason R. Flickner
307 Fairwood Dr.
Jeffersonville, IN 47130

Re: Formal Complaint 11-FC-01; Alleged Violation of the Access to Public Records Act by the City of Jeffersonville Clerk-Treasurer

Dear Mr. Flickner:

This advisory opinion is in response to your formal complaint alleging the City of Jeffersonville Clerk-Treasurer (the "Clerk-Treasurer") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* My office forwarded a copy of your complaint to the Clerk-Treasurer, but as of today we have not received a response. I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that you mailed a records request to the Clerk-Treasurer on December 16, 2010, and that the Clerk-Treasurer received your request on December 17th. You claim that you received "[n]o response to request with fulfillment arrangements or explanation of record exemption from disclosure requirements following seven (7) days from APRA receipt as required per I.C. 5-14-3-9." The Clerk-Treasurer's office sent you a letter dated December 27th in which it acknowledged receipt of your request and informed you that office staff would review its records for responsiveness to your request. The letter further informed you that the office would respond "within a reasonable time."

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 Clerk-Treasurer 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 Clerk-Treasurer'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).

Under the APRA, 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, it appears that the Clerk-Treasurer responded to your December 18th request on December 27th. If that is the case, the Clerk-Treasurer failed to respond to your written request within seven (7) days.

Beyond the Clerk-Treasurer's initial delay in responding to your request, it does not appear that the Clerk-Treasurer has denied you access to any records. The APRA does not prescribe timeframes for the actual production of records. 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, your request to the Clerk-Treasurer was quite broad. You sought access to (1) the City of Jeffersonville's receivership agreement for the property currently referred to as Richard Vissing Park; (2) the property deed including restriction documentation for Vissing Park; (3) the City of Jeffersonville's Master Plan for Vissing Park; (4) any and all plans, blueprints, maps, applications, surveys, and storm and waste water diagrams prepared for the proposed project at Vissing Park; (5) any and all socio-economic studies, alternative analysis [sic], public opinion surveys, public notices, minutes of public hearings, and comments from the public concerning the proposed project; (6) any and all current and historic aquatic, biologic, hydrologic, protected species, and botanic analysis performed at Vissing Park; (7) any and all correspondence of any kind including email to or from the Mayor's office and all personnel, all City Council members and personnel, all Parks Board members, all Parks and Recreation Department personnel, Grasshoppers Landscaping and Tree Service, Inc., or any other entity of the City of Jeffersonville concerning the proposed project; (8) any and all minutes of the City of Jeffersonville City Council and Parks Board in which the proposed project was discussed, including any and all motions to approve the proposed project; (9) any and all current and historic

photographs, descriptions, reports, and inventories of Vissing Park subsequent to and including the current status of the proposed project; and (10) any and all contracts, receipts of revenue, and proof of payments concerning the proposed project. At this time, not yet four weeks have passed since you submitted your request, and several days during that time period were recognized government holidays. Under such circumstances, I am hesitant to hold that the Clerk-Treasurer has failed to act reasonably. That said, if the Clerk-Treasurer cannot justify withholding the records under the APRA, I encourage the Clerk-Treasurer to release all responsive records to you as soon as possible. To the extent the Clerk-Treasurer fails to grant you access to the requested records following the issuance of an advisory opinion from this office and you believe the Clerk-Treasurer is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk-Treasurer should have responded to your request within seven days in accordance with section 9 of the APRA. The Clerk-Treasurer has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Peggy Wilder