



# STATE OF INDIANA

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August 6, 2012

Marc G. Lopez  
120 E. Market Street  
Suite 710  
Indianapolis, Indiana 46204

*Re: Formal Complaint 12-FC-194; Alleged Violation of the Access to Public Records Act by the City of Indianapolis – Office of Corporation Counsel*

Dear Mr. Lopez:

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis, Office of Corporation Counsel (“City”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the City. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on February 23, 2012, the City acknowledged in writing the receipt of your written request for records. As of July 11, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that you have yet to receive any records.

In response to your formal complaint, Ms. Brandes-Newsom advised that the City received your public records request on February 15, 2012 and provided written acknowledgement of its receipt to you on February 23, 2012. The City acknowledges that it failed to respond in writing to your written request within seven (7) days of its receipt. The City further regrets the lengthy period of time to fulfill your request, and would note that the City’s Office of Corporation Counsel is not the custodian of the records that you have requested. Rather, it provided legal representation to the Indianapolis Metropolitan Police Department (“IMPD”), who maintains the records. Upon receiving your formal complaint, the City immediately provided to you eight (8) pages of records via email. The City receives an extremely large volume of public records request, particularly in regards to the IMPD. The City and IMPD regret any inconvenience the delay in providing the records has caused, the actions of the agencies was inadvertent, and neither agency intentionally denied you access to the records.

## 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.” *See* I.C. § 5-14-3-1. The City and IMPD are public agencies for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s or IMPD’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the City acknowledged that it failed to respond in writing to your written request within seven (7) days of receipt of your request. The City received your written request on February 15, 2012 and responded in writing on February 23, 2012. As such, it is my opinion that the City acted contrary to the requirements of section 9(b) in response to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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 APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* 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. *See* 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. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

After submission of your original request to the City, close to six months followed before you received any records that were responsive. Eventually, eight (8) pages of records were produced by the City, only after a formal complaint was filed with the Public Access Counselor's Office. Although I am mindful of the additional duties and responsibilities required of the City and Department and the large volume of requests received by the City, it is my opinion that the City has failed to meet its burden to demonstrate that it has complied with the requirements of I.C. § 5-14-3-3(b) in providing the records that were responsive to your request in a reasonable period of time. In the future, in regards to those requests that require the City and/or the Department an extended period of time to produce all records, I would encourage the agencies to communicate on occasion with the requestor in order to provide them with a status of their request. Although this would not be required under APRA, it would be a factor in determining whether all records were provided in a reasonable period of time as required by I.C. § 5-14-3-3(b).

### CONCLUSION

For the foregoing reasons, it is my opinion that the City has failed to meet its burden to demonstrate that it complied with the requirements of I.C. § 5-14-3-3(b) in providing records that were responsive to your request in a reasonable period of time. Further, it is my opinion that the City failed to comply with the requirements of section 9(b) in responding to your written request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes-Newsom