



STATE OF INDIANA

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October 9, 2012

Greg D. Sobin
DOC 113650
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-258; Alleged Violation of the Access to Public Records Act by the City of Indianapolis – Office of Corporation Counsel

Dear Mr. Sobin:

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 in April 2012, you submitted two requests for records to the City. You thereafter received confirmation of receipt by the City of your request, but you have yet to receive any records. You allege that the City has failed to provide the records in a reasonable period of time as required under section 3 of the APRA.

In response to your formal complaint, Ms. Brandes-Newsom advised that your original request for records was received by the City on March 26, 2012. You sought copies of incident reports maintained by the Indianapolis Metropolitan Police Department (“IMPD”) from 2011 and 2012 for five (5) different individuals, as well as police booking photographs for one individual under two separate police report numbers. The City provided written acknowledgement of your request on April 16, 2012. The City thereafter contacted the IMPD to locate any records that would be responsive. On April 11, 2012, the City received correspondence from you, which appeared to be a clarification of the original request. The correspondence included a request for incident reports from 2011 and 2012 for an individual already named in the original request and provided a date of birth for the individual. The subsequent correspondence then added the names of nine (9) additional individuals for whom incident reports were sought. On April 30, 2012, the City provided written acknowledgement of your request.

On June 11, 2012, the City received further correspondence from you, in which you referenced the original request and now sought incident reports from 2010 to 2012 for an additional individual and a copy of a police report made by another individual “on February 27, 2011 or 2012.” On June 25, 2012, the City acknowledged the receipt of your additional request in writing. On July 27, 2012, the City received further correspondence from you seeking incident reports and booking photos on five (5) additional individuals. On August 29, 2012, the City received further correspondence from you referencing the requested booking photo of one individual and an incident report for another. On September 12, 2012, you filed an additional request for incident report for two individuals who had already been previously requested.

The City acknowledges and regrets that it did not timely response to your April 16, 2012 request pursuant to the requirements of section 9 of the APRA. The City has been working diligently with the IMPD to locate any records that are responsive to the request in addition to the large volume of other public records requests that are pending at this time on behalf of the IMPD and other City agencies. Because the records sought by request to the IMPD often concern investigatory or other protected records held by a law enforcement agency, such requests take additional time to process. As with all public records requests, the City must first contact the respective agency that would maintain such records. The respective agency must then undertake a search for records that would be responsive. After all records are collected, the City must work with the agency to review any records that are required to be withheld as confidential or that the agency would retain discretion to not disclose. The procedure for processing records requests cannot be expedited in situations where a requester amends an existing record request, seeks additional records, or where the request is restated in a subsequent request. You have enlarged the scope of your request on several occasions through additional correspondence, necessitating a change in scope of the search that is conducted by the IMPD.

The IMPD has now located the records that it believes that are responsive to your request and the records are now being reviewed for necessary redactions. The City anticipates mailing a letter to you no later than Friday, October 12, 2012 to advise you of the records availability.

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 is a public agency 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 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).

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*.

As applicable here, the City has noted that subsequent to your original request in March 2012, you have amended and/or enlarged your request for records on five separate occasions. As of today's date, you are seeking records on twenty-two separate individuals. While there is nothing that would prevent you from making additional requests under the APRA while a prior request is pending with the agency, such practice will likely have an effect on the time required of the agency to produce all records that are responsive to the requests. The City has provided that it began the search for the records that were responsive to your request upon its receipt, but noted that the search for police reports requires additional time due to the possibility the records may be considered "investigatory" as defined under I.C. § 5-14-3-2(h). In addition to your request for records, the City has the additional responsibility of responding to multiple other requests for records that have been submitted as well as maintaining its normal duties. As such, in light of all these factors and that the City will be submitting correspondence to you by the Friday, October 12, 2012 providing the availability of records that are responsive, it is my opinion that the City has complied with the requirements of I.C. § 5-14-3-3(b) in responding to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the City has 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.

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