



# STATE OF INDIANA

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January 4, 2013

Mr. Christopher P. Hartley  
1724 E. 12<sup>th</sup> St.  
Indianapolis, Indiana 46201

*Re: Formal Complaint 12-FC-348; Alleged Violation of the Access to Public Records Act by the Department of Public Safety of the City of Indianapolis*

Dear Mr. Hartley:

This advisory opinion is in response to your formal complaint alleging the Department of Public Safety of the City of Indianapolis (“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 you submitted a written request for records to the City on November 27, 2012. As of December 5, 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 response from the City. In your conversations with Ms. Lauren Hanley prior to your request, Ms. Hanley indicated that the City would not release the records that were responsive to your request beyond the previous six months of data that is available through the Mapping Application for Public Safety (“MAPS”) website.

In response to your formal complaint, Ms. Newsom advised that the City received your request and had subsequent communications with you regarding its status. The City acknowledged that it failed to provide a written acknowledgment of your request and regrets this unintentional oversight. The City indicated that you requested that the records be provided electronically in Microsoft Excel. As noted in the City’s initial response, six months of data is available via the City M.A.P.S. website. Ms. Newsom advised that Ms. Hanley was attempting to articulate a number of issues concerning the availability of the data and the provision that the data be provided in a Microsoft format. The City does not have any records that are responsive to your very specific request. You specifically sought a list of incidents that occurred between January 1, 2007 and May 31, 2012 that include a number of additional data elements. No such list presently exists and would have to be created by the Department to fulfill your request. Further,

the City retains the data in a number of formats and the data specifically sought is maintained in an Oracle database. The data that is maintained is vast and exceeds the date range identified in your request. The output format available from the Oracle database is not compatible with Microsoft Excel and transferring the data from Oracle to Microsoft would require the creation of a non-standard IT workaround and further additional programming. The programming would come at an additional cost to the City and would require the creation of a new record by the City that matches the specific data and data specifications that have been requested.

The City did advise that the data sought may be available through a review of incident reports generated from January 1, 2007 through May 31, 2012. While these reports likely contain data elements and incident narratives above and beyond the parameters identified in the request, they may provide many of the data elements sought. The City averages approximately 250,000 incident reports per year and estimates that there may be in excess of one million reports which may be responsive to your request.

#### 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).

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 advised that it failed to acknowledge in writing the receipt of your request within seven (7) days. Thus, it is my opinion that the City acted contrary to section 9(b) of the APRA in response to your request.

As to the substance of your request, generally if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to

satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56.* I would also note I.C. § 5-14-3-3(d) provides that:

“Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency’s data storage system. This subsection does not apply to an electronic map.”

Counselor Neal addressed a similar request for information maintained in an electronic database in a 2008 advisory opinion:

Here, you have requested an electronic copy of a record maintained by the City. While the City in its initial response to you made a reference to I.C. § 5-14-3-3.6, it is not my understanding this is a record to which the City has provide enhanced access (e.g. through its computer gateway). Rather, it is a record created and maintained by the City which is maintained in an electronic format. As such, it is the type of record contemplated by I.C. § 5-14-3-3(d). In other words, it is maintained in an electronic database. As such, the City must make reasonable efforts to provide a copy of the record in the medium requested if the medium requested is compatible with the City’s data storage system. *See § 5-14-3-3(d). Opinion of the Public Access Counselor 08-FC-141.*

In a subsequent opinion, Counselor Neal advised:

Here, you have requested an electronic copy of a database maintained by the Department; you have requested the copy in a particular format. If the requested record is a record created and maintained in an electronic format, it is the type of record contemplated by I.C. § 5-14-3-3(d). As such, the Department must make *reasonable efforts* to provide a copy of the record in the medium requested if the medium requested is compatible with the Department’s data storage system. *See § 5-14-3-3(d).* It is my understanding the Department is now investigating what efforts will be required to provide you the records in the format requested. *Opinion of the Public Access Counselor 08-FC-146.*

The information that has been requested is part of an extensive Oracle database that is maintained by the City. The data set is vast and exceeds the date ranges and the information that you have requested. The City has further provided that the Oracle database is incompatible in the format you have requested (e.g. Microsoft Excel) and transferring the data from Oracle to Microsoft Excel would require the creation of a non-standard IT workaround and additional reprogramming by the City. Accordingly, it is

my opinion that the City would not be required under the APRA to provide the information in the format that you have requested.

However, if you were to amend your request to for the information to be provided in its original format (e.g. Oracle), the City has maintained that is has never run the specific query for which you have requested. Counselor Davis provided the following analysis of this issue in a 2007 opinion:

I do not read the Access to Public Records Act to require a public agency to sort or compile data within the database in a specified way at a person's request. A report that has not already been created by the public agency is not required to be compiled electronically merely because a computer program would allow the public agency to do so. Rather, all disclosable data could be provided to the person upon request on a disk, and the person could sort or analyze the data as he or she sees fit. . .

I read the School's response to state that the School has not generated a report that contains this specific sorting of information. If this is true, then it is my opinion that the School is not required to generate a specific report sorting the data in the way that you request. However, the School would be required to make reasonable efforts to provide a copy of all disclosable data stored in the database. The School is entitled to charge a fee that is the direct cost of supplying the information on a disk. *See* IC 5-14-3-8(g). In addition, if the School must reprogram the computer to separate nondisclosable data (the students' names) from disclosable data, the School may charge you a fee that is the School's direct cost to reprogram the computer. *See* IC 5-14-3-6(c). "Direct cost" is defined in IC 5-14-3-2(c). *See Opinion of the Public Access Counselor 07-FC-63.*

I agree with the analysis provided by Counselor Davis. While the City would be required to provide the database in its original format, minus any requirement to reprogram, it would not be required to sort or compile data within the database in a specific manner as a result of your APAR request, as the City has not previously conducted an identical query.

## CONCLUSION

For the foregoing reasons, it is my opinion that the City acted contrary to the requirements of section 9(b) of the APRA in response to your request. It is my opinion that the City has complied with the requirements of I.C. 5-14-3-3(d) in response to your 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