



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 12, 2013

Ms. Gina McLane
6415 Canna Ct..
Indianapolis, IN 46217

*Re: Formal Complaint 13-FC-93; Alleged Violation of the Access to Public Records Act
by the Indianapolis Metropolitan Police Department*

Dear Ms. McLane:

This is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department violated the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Ms. Samantha DeWester, City Prosecutor and Public Access Counselor, responded on behalf of the Indianapolis Metropolitan Police Department ("IMPD"), City of Indianapolis Office of Corporation Counsel and the City of Indianapolis (the "City"). Her response is enclosed for your reference.

BACKGROUND

You allege in your complaint that the IMPD violated the APRA by "repeatedly" denying you access to public records pertaining to the investigation of your son's death in 2005. You state that you asked for such records "in person on several occasions", and that you have "been asking for over 7 years and have been told many different stories". From the documentation you provided with your complaint, it appears that you have made two written requests for public records on May 30, 2012 and again on March 11, 2013.

You initially sent a request for records to the IMPD on May 30, 2012, in which you requested copies of all "the investigative records including supplemental reports involving the death investigation of Scott Allen McLane II." On June 6, 2012, Mr. Ryan Hendershott, IMPD Litigation Paralegal, sent a written response acknowledging your request and stating that IMPD had "initiated a search of its public records to identify and collect those records, if any, that are responsive to your request." Mr. Hendershott also informed you that IMPD would inspect responsive records to determine "whether they contain any material which by statute shall or may be withheld from public inspection



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and copying”, and would notify you when this process had been completed. Ms. Zaida Maldonado-Prather sent a letter to you dated January 22, 2013, informing you that IMPD had searched for records responsive to your request and had found no responsive records.

You sent another request for public records to IMPD on March 11, 2013, seeking copies of “all investigative records related to case number 05-0230825-0001 or any other case involving the death of Scott Allen McLane II, including all investigative supplemental records filed by any and all officers involved.” Ms. Maldonado-Prather sent a written acknowledgement of your request dated March 11, 2013, stating that IMPD had “initiated a search of its public records to identify and collect those records, if any, which are responsive to your request.” Ms. Maldonado also informed you that IMPD would inspect responsive records to determine “whether they contain any material which by statute shall or may be withheld from public inspection and copying”, and would notify you when this process had been completed. You then filed this complaint on March 18, 2013.

Ms. DeWester’s response on behalf of IMPD and the City largely confirms the factual outline regarding your previous correspondence and request for records submitted to IMPD. Ms. DeWester notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time. Ms. DeWester states that “[s]ince the time of the Request, OCC, the City and IMPD initiated a search of any responsive records, and that the City “properly responded to the Request within seven (7) days of receipt pursuant to the APRA.” Further, the City informed you in writing on January 22, 2013 that “after a diligent search through IMPD records...IMPD had no documents which would fulfill the Request.”

Upon receipt of your complaint, Ms. DeWester explains that she requested IMPD conduct another “thorough search” for any responsive records, and that following this search, the City discovered that “IMPD was in fact not the police agency responsible for the investigation involved in the original Request”. The City then conducted a search of public records maintained by “other county/city agencies”, and according to Ms. DeWester, “some potentially responsive records were finally discovered.” Ms. DeWester states that the City “is in the process of reviewing the documents, redacting any privileged information, and determining what can be released” to you, and that she anticipates that the City will be able to provide responsive records to you by May 10, 2013. I understand from Ms. DeWester that such records were in fact provided to you on May 8, 2013.



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With regard to the apparent delay in finding responsive records, Ms. DeWester cites the “confusion of which police agency handled the original investigation” as the reason why the City was not able to find and provide responsive records to you more quickly. Ms. DeWester apologizes on behalf of the City and IMPD for the delay. Further, Ms. DeWester explains that the City has a large volume of pending public records requests. Ms. DeWester argues that the time the City has taken in disclosing responsive records has been reasonable under the APRA.

ANALYSIS

Though you note in your complaint that you have been “repeatedly” denied access to the records you request, the APRA provides that a complaint arising from denial of access to records must be filed with the Office of the Public Access Counselor within thirty (30) days of the denial. See I.C. §5-14-5-7. You filed your complaint on March 18, 2013 – nearly sixty (60) days after the City’s January 22, 2013 letter informing you that the City had no public records responsive to your May 30, 2012 request. As a result, I restrict my analysis in this opinion to issues arising from your March 11, 2012 request, and I do not address any violation of the APRA that may have occurred with respect to your May 30, 2012 request.

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. Accordingly, any person has the right to inspect and copy a public agency’s 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 by mail, email or facsimile and the agency does not respond to the request within seven 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 information regarding how or when the agency intends to comply. Here, the City provided a written response to your March 11, 2013 request on the same day. The City’s acknowledgement of your request occurred well within the time limitation imposed by the APRA.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. In accordance with section 3(b) of the APRA, the public access counselor has stated repeatedly that records must be produced within a reasonable



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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 extensive the process is to gather and redact the records, and whether the records must be reviewed by counsel and redacted 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 APRA. I.C. §5-14-3-7(c). Thus, under section 7, the City should not permit employees to neglect their essential duties in order to respond to public records requests, but the City cannot simply ignore requests either, even when facing the high volume of pending public records requests described by Ms. DeWester. 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.*

Based on the information provided in the complaint and in the City's response, I cannot say that the City has acted contrary to either section 3(b) or section 7 of the APRA. The City attributes the delay in producing the records you requested to the fact that the City has a large volume of pending public records requests and "confusion over which police agency handled the original investigation". Further, the City states that after responsive records are found, the Office of Corporation Counsel for the City must "review any responsive records to determine if they contain items which shall or may be withheld by law" before such records can be made available for your review. Ms. DeWester informs me that the City did in fact provide the requested records to you on May 8, 2013.

Given these facts, I cannot say that the City has violated the APRA by taking an unreasonably long time to produce records responsive to your request, or by denying you access to public records. I would note that the public access counselor 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-260.*

CONCLUSION

For the foregoing reasons, it is my opinion that the City has not violated Section 3(b) of the APRA by not providing responsive records to you as of March 8, 2013. I understand that the City has provided the requested records to you as of May 8, 2013, and I trust that this satisfies your request.



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Please contact me if I can be of additional assistance.

Best regards,

Jennifer L. Jansen
Acting Public Access Counselor

Cc: Ms. Samantha DeWester, City Prosecutor and Public Access Counselor