



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 12, 2014

Mr. David Grenoble
5439 Bombay Dr.
Indianapolis, IN 46239

Re: Formal Complaint 14-FC-150; Alleged Violation of the Access to Public Records Act by the City of Beech Grove

Dear Mr. Grenoble,

This advisory opinion is in response to your formal complaint alleging the City of Beech Grove ("City")¹ violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded to your complaint via City Attorney Craig W. Wiley, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 18, 2014.

BACKGROUND

Your complaint dated July 18, 2014, alleges the City of Beech Grove violated the Access to Public Records Act by not responding to your public records request.

On or about July 1, 2014, you requested from the City "a copy of the law/statute...where the city attorney has the right to hire outside legal services and assign the invoice to any city department." The City Attorney responded to your request stating, "The duties and responsibilities of the City Attorney are defined by statute. The Indiana Code is public online at www.in.gov. This should answer your question." This was followed by a similar exchange. You allege the City has violated the APRA by not specifically citing to a particular Indiana Code reference.

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

¹ Your complaint is directed primarily at the City's Attorney; however, as the Attorney is an agent of the City of Beech Grove, the City is named as the respondent.

of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The City of Beech Grove is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The question of who owns the law is a frequent topic of scholarly debate in the legal/public access arena.² The general consensus is that no one actually owns the law, but rather it is public domain and should be freely available. The Indiana General Assembly has done so by publishing the Indiana Code in various forms, including online. It is not the responsibilities of public agencies to have a copy on hand. Moreover, it is also not the responsibility under the APRA or any other portion of the Indiana Code to do research or answer questions upon request – including giving legal advice. While the City Attorney has included the citation in his response which answers your question, he did not initially err in referring you to the www.in.gov website which contains the Legislature’s page and the Code.

Ind. Code § 5-14-3-2 is an exhaustive list of what constitute a public record. The City would be obligated to produce such a record if it exists. You posed a question, however, and did not request a specific document which would be in the custody of the City.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the City of Beech Grove has not violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Craig W. Wiley, Esq.

²http://www.abajournal.com/magazine/article/who_owns_the_law_technology_reignites_the_war_over_just_how_public_document/.