



STATE OF INDIANA

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November 14, 2014

Mr. Marc J. Chase.
2080 N. Main St.
Crown Point, IN 46307

Re: Formal Complaint 14-FC-246; Alleged Violation of the Access to Public Records Act by the City of Hammond

Dear Mr. Chase,

This advisory opinion is in response to your formal complaint alleging the City of Hammond ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Ms. Kristina Kantar, Esq., Corporation Counsel. 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 October 17, 2014.

BACKGROUND

On or about October 15, 2014, you hand-delivered a public records request seeking the delineated dollar amounts of any settlement, attorneys' fees and other associated legal costs for three lawsuits in which the City was named a defendant. The City responded on October 16 by stating the request was denied because the Access to Public Records Act does not address "delineated dollar amounts".

The City responded to your formal request by stating the same and considered the request improper. It interprets your request to seek documents which do not exist, specifically a summary of the litigation and associated costs. It maintains the City does not have any records to satisfy your request.

DISCUSSION

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 Ind. Code § 5-14-3-1. The City of Hammond 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 City is correct in stating that there is no obligation under the APRA to produce records which do not exist. By the same token, there is an affirmative obligation under the APRA on the part of a requester to identify documents sought with "reasonably particularity." See Ind. Code §5-14-3-3.

After reviewing your original request, it appears as if what you are asking for is relatively straight-forward. It may be true that the information is not in one particular document or is summarized succinctly, but you identify the *type* of public records sought with an element of specificity. I have often held that a requester does not need to identify a record with pinpoint accuracy, but must give the agency an idea of what it should be looking for.

This is consistent with the Court of Appeal's decision in *Jent v. Fort Wayne Police Dep't*, 973 N.E.2d 30 (2012):

Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.

While this interpretation places the subjective discretion on the agency to determine whether they can search for and retrieve the records, it is my subjective opinion that your request gives enough information for search parameters. In terms of the litigation documentation, you identify the party names and cause number. If the case was indeed settled, there will be a settlement agreement or decree. If there are attorneys' fees and associated costs, there will be invoices from the law firm or expenditure reports. The City is under no obligation to create a summary of this information, but rather the documentation itself showing these expenses.

The City has not contended that it has no capacity or ability to search for these types of records. I do not agree with them that you strictly asked for records which do not yet exist.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor that the City of Hammond has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kristina Kantar, Esq.