

August 30, 2002

Mr. Timothy Lee Deaton  
c/o 1641 South Riley Highway  
Shelbyville, IN 46176-2855

Re: Advisory Opinion 02-FC-38; Alleged Denial of Access to Public Records by the City of Carmel.  
Dear Mr. Deaton:

This is in response to your formal complaint, which was received on August 8, 2002. You have alleged that the City of Carmel ("City") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the denial of access to public records in response to your July 25, 2002 request violated the APRA. Mr. Douglas Haney, City Attorney, responded to your complaint by providing a copy of a letter he wrote to you after receiving the formal complaint. A copy is enclosed for your reference. For the reasons set forth below, it is my opinion that the reasons cited by the City in the denial of your July 25th public records request were not valid under the APRA.

## BACKGROUND

According to your complaint, you sent a request for access to public records to the City dated July 25, 2002. You asked for the opportunity to inspect or obtain copies of the following:

(a)ll records of any kind whatsoever relative to the project commonly known as 'City Center Drive/Adams Street in Carmel' and also know as "Project 122th Street-Adams Street" which is also part of the subject matter of Cause Number 29D01-0102-MI-0073 styles as City of Carmel, Indiana v. Tim Deaton et al. The records shall include, but not be limited to, offers of payment, payment, check registers, research material, appraisals, etc. and shall be made available from all sources whatsoever in the City of Carmel.

In a letter dated August 2nd, Mr. Haney denied your request for the following reasons:

(Y)our request does not state with reasonable particularity the documents you wish to review, and is so broad that it could well include intra-office deliberative documents, attorney work-product and/or other documents exempt from disclosure under IC 5-14-3-4 or other applicable law. Moreover, since you stated that this matter is currently in litigation, this request attempts to by-pass the proper discovery procedures set forth in the Indiana Rules of Trial Procedure, as the same have been approved by the Indiana Supreme Court.

After receiving Mr. Haney's denial letter, you filed your formal complaint with this Office.

In response to your complaint, Mr. Haney first contacted me by telephone to discuss your request and his denial letter. On August 16, 2002, Mr. Haney sent another letter to you, which he describes as an

"explanatory addendum" to his original response to your public records request. In this addendum, Mr. Haney explained his rationale for denying your request as not being reasonably particular under the APRA. First, he explained that the City has no projects by the names you provided in your public records request. In particular, Mr. Haney suggested that without more specific information, such as the descriptions of documents, dates or authors, your "blanket" request for broad groupings of documents was too broad for him to determine what individual City documents would be responsive to your request.

In any event, in his August 16th letter, Mr. Haney stated that he had made an effort, even without more particulars, to identify public records that were responsive to your request. He further stated that, based upon his stated assumptions, he had identified 1,625 pages of disclosable documents and that you could make arrangements to visit his office at City Hall during normal business hours to review them.

## 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." Ind. Code § 5-14-3-1. The City is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2.

Any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana code section 5-14-3-4. Ind. Code § 5-14-3-3(a). If public agency denies a request under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

The bases of the City's denial of your July 25th public records request were that the request was not reasonably particular under the APRA and that pending litigation between you and the City authorized this denial. Both of these bases will be analyzed in the following paragraphs.

### Reasonable Particularity

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," so were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary, dictionary meanings of the word used. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the state of being particular rather than general." *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* (1981), 956. Rules of statutory interpretation also require that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991).

Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact

the requestor for more information if it is necessary to respond to the request. See generally, Ind. Code § 5-14-3-1. Based on my experience, most requestors are more than willing to provide the necessary clarification to public agencies. While your request to the City was broadly stated, you did provide some specificity as to the types of records you wished to access and a description of the projects, even if the labels you provided were not appropriate. It is my opinion, therefore, that if the City did not understand your request or was unclear as to what public records you were seeking, then the City should have contacted you for more information rather than to just deny your request as a whole.

### Pending Litigation as a Basis for Denial

The second reason provided for denial of your July 25th request for access to public records was that the matters raised in your request are a matter of litigation between you and the City. As noted above, the City was required to provide a statutory basis for their denial. None of the exceptions listed in the APRA suggest that pending litigation is a basis for denial of access. See generally, Ind. Code §5-14-3-4.

Further, the City stated in its response that your request was an attempt to by-pass the proper discovery procedures set forth in the Indiana Rules of Trial Procedure ("Trial Rules."). I have reviewed the Trial Rules and did not find any language that would prohibit a party in litigation from making a public records request under the APRA. If a party to litigation believes another party's actions violate the rules of discovery, there are remedies within the Trial Rules to address those situations.<sup>1</sup> For this reason, it is my opinion that the City's denial of your July 25th request, which was based on the fact that you have pending litigation against the City, was not a proper denial under the APRA and that this denial is actionable under Indiana Code section 5-14-3-9.

It is my opinion, therefore, that the City's outright denial of your July 25th public records request for the reasons that it was not reasonably particular and that the Trial Rules prevented you from using the APRA was not appropriate. To his credit, however, Mr. Haney did spend considerable time after receiving your formal complaint trying to identify public records that may be responsive to your request and that should permit you to access some if not all of the records you originally requested.

### CONCLUSION

It is my opinion that the City of Carmel's denial of your July 25, 2002 public records request was not appropriate under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Douglas Haney, City Attorney w/o enclosure

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