



STATE OF INDIANA

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January 9, 2025

Re: Complaint 25-FC-070
Josh Huser (Complainant) v.
City of Fishers (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed March 31, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on October 22, 2025, requesting a formal response by November 20, 2025. A formal response, submitted by City Corporation Counsel Lindsey Bennett on behalf of Respondent, was received in this office on November 20, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide access to the Respondent's electronic records and database regarding potential rental properties and the rental permit program.

ANALYSIS

The public policy of 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 is to provide the information." Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14-3-3(a).

APRA defines "public record" as any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(r).

Complainant states that on February 13, 2025, it renewed an earlier request to inspect or obtain an electronic copy of the records related to identification of single-family rental properties within the City of Fishers, specifically in regard to information presented to the City Council and the summary number of 2522, representing the suspected number of potential of rental properties.

Respondent submitted its response and cited the definition of public record to exclude the search of the Tolemi software that resulted in a summary of suspected rental properties to include 2522 parcels. Respondent further states that the records as requested are not disclosable because they do not exist.

The Respondent contends that a computer search that resulted in a number, as used in the presentation to the City Council, neither constituted the required document under the public records definition, nor did it fulfill the definition of being generated in a manner that would retain it for future review or storage. Respondent states that the data related to that number was not retained anywhere on paper or electronically for future use.

This office agrees that a search result, that is not recorded or retained, does not constitute a public record. It would be impractical for every public employee to save and record every search made, and a “search” does not meet all the requirements listed in the definition of public records, as defined above. Therefore, the Respondent cannot produce a record it does not have, in that the search was not saved in any fashion.

In reading Respondent’s response, the search parameters were not saved when the 2522 number was generated, and the data available would potentially change depending on when the underlying data is updated. Therefore, the exact record search that Complainant requested may not exist, or be duplicated, because of the dynamic nature of the Tolemi software.

APRA does not require the public agency to create a record to fulfill a request. APRA is for pre-existing records.

Then, Complainant repeatedly asked for the underlying data to be released. As above the underlying data could not be duplicated, but it also could fall under the IC 5-14-3-4(b)(6):

Records that are intra-agency or interagency advisory or deliberative material...that are...of a speculative nature, and that are communicated for the purpose of decision making.

Respondent was considering a rental registration program which was not yet adopted and looking to Tolemi as a potential tool to assist in administration. Respondent stated, “[t]he resulting data is still imperfect and requires City staff

to then research and refine the data to determine if the properties have actual potential to be rental properties.”

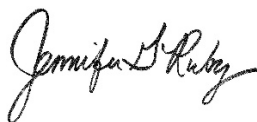
Tolemi is proprietary software that was being tested in this instance. Respondent is licensing one or more platforms of the Tolemi software for use.

Zillow is frequently mentioned by Respondent as a comparison. Like Zillow, the data used by Tolemi will be from a mixture of sources which will include Respondent data sources as well as data from other web sources, which Respondent does not own or maintain. It does not appear that there will be one new database that can be viewed or released.

However, Respondent stated, “When we begin enforcement of violations, the City can provide Tolemi City-maintained data....” Therefore, there will be a way for the public to access and use the data, which is not yet possible. This was further re-enforced by Respondent stating, “If staff run a parcel search or generate a list in Tolemi, the results can be exported as a CSV (comma separated values) file.” CSV files can be imported into a spreadsheet or database application for review and use.

CONCLUSION

This office finds that a computer “search” which was not saved or otherwise retained for future use is not a record under APRA. Therefore, Respondent did not violate APRA by failing to provide a copy of the search that was not saved and cannot be duplicated.

A handwritten signature in black ink, appearing to read "Jennifer G. Ruby". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer G. Ruby
Public Access Counselor