



STATE OF INDIANA

MIKE BRAUN, Governor

PUBLIC ACCESS COUNSELOR

BRITTNEY A. LONG

Statehouse Room 105

200 West Washington Street
Indianapolis, Indiana 46204-2745

Telephone: (317) 234-0906

Fax: (317) 233-3091

Toll Free: 1-800-228-6013

Email: pac@opac.in.gov

Website: www.IN.gov/pac

October 6, 2026

Re: Complaint 26-FC-177
Travis LeMaster (Complainant) v.
City of Marion (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed on April 6, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on April 30, 2026, requesting a formal response by May 26, 2026. A formal response, submitted by Attorney Michael Holtz, Attorney for the City, on behalf of Respondent, was received in this office on May 19, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide a copy of the requested records.

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(s). 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).

Complainant alleges that Respondent violated APRA when it failed to provide all the records requested in its March 15, 2026, APRA request for all “Nondisclosure Agreements (NDAs) related to development of a data center project with MCP International.”

Respondent states that no responsive records exist. No information was given as to whether NDAs were actually signed or even existed.

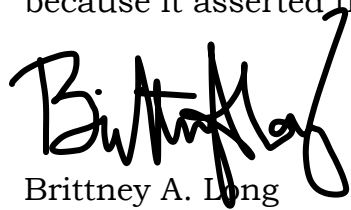
This office has repeatedly held that Respondent is not required to produce records that do not exist or create records to fulfill an APRA request. *Opinions of the Public Access Counselor 03-FC-146, 05-FC-25, 10-FC-086, and 12-FC-328* to support. If Respondent provided all the records responsive to Complainant's request, then the records request has been fulfilled.

This office has also advised that if a record exists but is held by a third party then that record should be produced. In *Opinion of the Public Access Counselor 25-FC-017*, this office relied upon the Court in *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d 1127. That Court held that a settlement agreement being held by counsel for an insurance company was a public record of the Town of Knightstown. *Id.* Even though Knightstown did not have a copy of the settlement in its possession it was deemed a public document that should have been in the files of the Town. *Id.* This office advised "[s]ince Respondent was a party to this MOU, it should follow that Respondent should have maintained a copy of the MOU. The MOU was signed on or about July 14, 2020, and is still a valid and controlling document. *Opinion of the Public Access Counselor 25-FC-017.*

Likewise, in this matter, if the Respondent was a party to a NDA, the NDA is a public document, it should follow that the Respondent should have maintained a copy of the NDA.

CONCLUSION

Respondent may have violated the APRA if there is/was a NDA between the Respondent and MCP International related to development of a data center project, regardless of whether the Respondent retained a copy of the agreement. However, this office finds that Respondent did not violate APRA because it asserted that the records did not exist.



Brittney A. Long
Public Access Counselor