



STATE OF INDIANA

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March 19, 2009

Wyatt Johnson
555 Market Road
Tipton, Indiana 46072

Re: Formal Complaint 09-FC-63; Alleged Violation of the Access to Public Records Act by the City of Tipton

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the City of Tipton ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to provide you access to records. A copy of the City's response to the complaint is enclosed for your reference. In my opinion the City has not violated the APRA.

BACKGROUND

You allege that on February 2, 2009 you hand delivered to the City a request for access to records. You further allege you received a response from the City on February 2. You include copies of the request and response. You allege that the City has not provided the requested records in a sufficient amount of time.

The City responded to the complaint by letter dated March 5 from City Attorney William Huff. The City contends the response was timely and appropriate under the APRA. The City contends that while my office's *Handbook on Public Access Laws* suggests an agency's response might include an indication when records will be available, the APRA does not require the agency to include such. The City contends the February 2 response was sufficient. The City further contends it provided you all responsive records on February 24. The City indicates that in an effort to improve future responses, the City has incorporated my office's sample response letter in its materials.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-

2(m). Accordingly, 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 the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the City had the duty to respond to the request within twenty-four hours of receipt. I.C. § 5-14-3-9(a). If the City failed to do so, it would have violated the APRA. The City responded to your request on the same day you submitted it, so the City's response was timely under the APRA.

Nothing in the APRA requires the response to be made in writing, unless the City is denying access to records which were requested in writing. *See* I.C. § 5-14-3-9(c)(1). Here, the City did respond to the request in writing. Nothing in the APRA provides what must be included in a response. By the letter of the law, a simple "your request has been received" would be a response to the request and would satisfy I.C. § 5-14-3-9(a). My office suggests that agencies provide more information, like how or when the agency intends to comply with the request. In my opinion the more information communicated between the requester and the agency, the less likely the chance of a misunderstanding regarding the request. The City's response here was sufficient under the APRA. I applaud the City for incorporating additional language from my office's sample response letter so as to improve communication in future responses.

CONCLUSION

For the foregoing reasons, it is my opinion the City has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: William Huff, City of Tipton