



STATE OF INDIANA

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September 24, 2010

Ms. Linda K. Treat
City of Lawrence Common Councilor - District 2
8126 E. 56th St.
Indianapolis, IN 46216

*Re: Formal Complaint 10-FC-192; Alleged Violation of the Access to
Public Records Act by the City of Lawrence*

Dear Ms. Treat:

This is in response to your formal complaint alleging the City of Lawrence ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the City's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the City has violated the APRA by refusing to provide you with CAD reports, which are electronic records that contain information regarding daily runs made by the Lawrence Police Department ("LPD"). You state that you received the reports during the last term of the City Council and would like to continue receiving them to stay informed about crime in the City. You also note that you would be willing to sign a confidentiality statement if necessary to receive the information.

Corporation Counsel James M. Gutting responded to your complaint on behalf of the City. Mr. Gutting acknowledges that the CAD reports have been provided to the City Council in the past. In early 2010, however, it was brought to the City's attention that some information in the CAD reports should not be released to the public. In April of 2010, the City requested advice from the Office of the Public Access Counselor regarding whether or not the CAD reports should be released. This office advised the City that information regarding officers' identities (i.e., badge numbers) and specific addresses should be redacted from the daily reports. Mr. Gutting maintains that such information is confidential. With respect to the identity of police officers, Mr. Gutting notes that such information is not required to be released under section 5 of the APRA. Moreover, the City believes that releasing the identities of responding police officers may put officers at risk for retaliatory acts or unintentional disclosures of the identities of undercover

officers. As to the exact addresses of the runs, Mr. Gutting notes that releasing specific addresses could violate Ind. Code § 35-42-4 if it identifies the address of child endangerment incident or the address of a victim of certain types of crimes. He states that the address for such incidents would be provided within the “hundred block” of the street where the incident occurs.

In July, following an exchange of several emails between the City and the City Council, the City informed the City Council that redactions of the reports would be necessary and that alternative means of producing the report would be reviewed. Mr. Gutting states that the non-confidential information contained in the CAD reports is freely available through alternative means, including the Fox 59 Crime Tracker at <http://www.fox59.com> and *The Indianapolis Star* at <http://www.indystar.com>. Because those websites are freely available without cost, the City believes that the time and expense necessary for redacting and reconstituting the CAD reports are not productive uses of public resources.

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.” I.C. § 5-14-3-1. The City is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, I note that the APRA does not make a distinction between APRA requests made by public officials and APRA requests made by members of the general public or news media. *See* I.C. § 5-14-3-3. Consequently, the following analysis would apply to anyone making a request for the CAD reports and is not confined to members of the City Council. If the City Council enjoys any rights to access this information beyond those provided in the APRA due to the nature of the Council’s relationship with the City, such rights are an internal matter for the City Council itself and beyond the scope of my advisory authority as the public access counselor. *See* I.C. § 5-14-4-4(10).

I also note that this dispute concerns access to a record that is stored electronically. The APRA contains special provisions regarding such records. *See* I.C. § 5-14-3-3(a). Specifically, the APRA requires that “a public agency that maintains . . . public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency’s storage system.” *Id.* Additionally, a public agency has the discretion to either grant or deny another public agency’s request to “use an electronic device to inspect and copy public records containing information

owned by or entrusted to the agency.” See I.C. § 5-14-3-3(c)(2). In other words, the APRA does not require public agencies to allow other public agencies to electronically inspect their records, but agencies are permitted to allow such inspections if no confidential information will be disclosed in the process. Thus, the APRA requires the City to make “reasonable efforts” to provide a copy of the CAD reports, but it does not require that the City grant the Council electronic access to the reports.

That said, the APRA does not require -- or even permit -- the City to disclose confidential information to the Council. Clearly, the exact street addresses of victims of crimes listed in Ind. Code § 35-42-4 are confidential and should not be released. I.C. § 5-14-3-5(c)(3)(B); see also *Post-Tribune v. Police Dep't*, 643 N.E.2d 307, 309 (Ind. 1994) (“[Subsection 5(c) of the APRA] does not require release of the exact address of a crime. In fact, to release the exact address would be tantamount to naming the victim and thus defeat the intent of the legislature [to protect the identities of such victims].”). The APRA also permits agencies to withhold the names of law enforcement officers who are operating in an undercover capacity. I.C. § 5-14-3-4(b)(22). Moreover, information that is not required to be released by subsection 5(c) of the APRA may be subject to the investigatory records exception, which would also provide the LPD with the discretion to withhold records compiled in the course of an investigation of a crime. See I.C. §§ 5-14-3-4(b)(1); 5-14-3-2(h).

The APRA recognizes that separating disclosable from nondisclosable information in electronic records can consume significant resources from public agencies. Accordingly, the APRA provides that a public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if: (1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and (2) *the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information*. I.C. § 5-14-3-6(c) (emphasis added). “Direct cost” means one hundred five percent (105%) of the sum of the cost of: (1) the initial development of a program, if any; (2) the labor required to retrieve electronically stored data; and (3) any medium used for electronic output; for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter. I.C. § 5-14-3-2(c). Consequently, if the City must reprogram its computer system in order to create fully disclosable versions of the CAD reports, it could charge the requester for the direct costs of doing so. Whether or not the City should waive such fees for the Council is not for me to decide, but nothing in the APRA would require such a waiver.

In essence, the City argues that requiring it to manually redact each page of the CAD reports and create new, non-specific street addresses for each incident location would go beyond the APRA's requirement that it make “reasonable efforts” to provide the Council with a copy of the electronically stored records. If the Council is willing to pay the City the City's direct cost of reprogramming its computer system to provide non-confidential versions of the CAD reports (and such a conversion is possible), the City should release the reports accordingly. However, considering that the non-confidential

information in the CAD reports is freely accessible through other means, I agree that the City has not violated the APRA by refusing to create new versions of the CAD reports for the Council.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: James M. Gutting