



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
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May 20, 2013

Mr. Michael O. Craig  
5124 W. Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 13-FC-110; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Craig:

This is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department violated the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Ms. Samantha DeWester, City Prosecutor and Public Access Counselor, responded on behalf of the Indianapolis Metropolitan Police Department ("IMPD"), City of Indianapolis Office of Corporation Counsel and the City of Indianapolis (the "City"). Her response is enclosed for your reference.

## BACKGROUND

You appear to allege in your complaint that the IMPD violated the APRA by denying you access to public records. You submitted a request to the City's Office of Corporation Counsel for "all arrest, booking and any interviews that involved Michael O. Craig for the [dates] of October 7<sup>th</sup> and October 8<sup>th</sup> of 2011 at the South District Roll Call". It is unclear from your complaint when exactly you submitted your request, or what date you allege you were denied access to the requested records.

Ms. DeWester's response on behalf of IMPD and the City states that the City received your request (which was dated January 16, 2013) on February 5, 2013. According to Ms. DeWester, Ms. Zaida Maldonado-Prather sent a written acknowledgment of your request on the same day it was received by the City, informing you that the IMPD had completed a search for records responsive to your request, and advising you that responsive records were available to you and copy charges associated with the request amounted to \$0.24 (six pages at a charge of \$0.04 per page).



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Ms. DeWester also states that the City received additional correspondence from you dated February 8, February 15, March 6, and March 12 in which you asked for updates on the status of your initial request, request the same information again, and “adding additional items” to your request. Per Ms. DeWester, your February 8, 2013 letter requested “if some stated if I was booked into that facility or do you all have any records of me being there on or about October the 7th or 8th of 2011 not 2012...”; your February 15, 2013 letter requested “records or copy’s from South District Roll Call showing where I was in their facility on or about October 7th or 8th between 11:30 p.m. and 1:13 a.m.”; and your March 6, 2013 letter requested “information on rather I Michael O. Craig was at the South District roll call on or about October 7th or 8th of 2011 from 11:30 p.m. to 1:13 a.m.”. It appears that you also sent a complaint to the City on March 12, 2013, in which you request “a copy of all arrest, booking and or any interviews that involved Michael O. Craig for the dates of October 7th and or October 8th of 2011 at the South District Roll Call”.

According to the City’s response to your complaint, the City received a check in the amount of \$0.24 to pay copying fees associated with your request on March 6, 2013, and mailed the responsive records to you on the same day. The City believes that production of these records has fulfilled your request, and Ms. DeWester states that the City has advised you that the neither the City nor IMPD has any additional records responsive to your request.

Ms. DeWester notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time. Ms. DeWester states the City “properly responded to the Request within seven (7) days of receipt pursuant to the APRA.” Further, Ms. DeWester explains that the City has a large volume of pending public records requests, and argues that the time the City has taken in disclosing responsive records has been reasonable under the APRA.

## 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.” *See* I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency’s records during regular business hours unless the records are excepted from disclosure as



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confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a). A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail, email or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the City received your first request on February 5, 2013 and sent a written acknowledgment of your request on the same day, which is well within the time limitation imposed by the APRA.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. In accordance with section 3(b) of the APRA, the public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how extensive the process is to gather and redact the records, and whether the records must be reviewed by counsel and redacted to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe.

Section 7 of the APRA requires a public agency 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 APRA. I.C. §5-14-3-7(c). Thus, under section 7, the City should not permit employees to neglect their essential duties in order to respond to public records requests, but the City cannot simply ignore requests either, even when facing the high volume of pending public records requests described by Ms. DeWester. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor* 02-FC-45. Based on the information provided in the complaint and in the City's response, I cannot say that the City has acted contrary to either section 3(b) or section 7 of the APRA.

To apply these standards to the present situation, the City attributes any delay in producing the records you requested to the fact that the City has a large volume of pending public records requests. Further, the City states that after responsive records are found, the Office of Corporation Counsel for the City must "review any responsive records to determine if they contain items which shall or may be withheld by law" before such records can be made available for your review. The City received your request on February 5, 2013, and provided all responsive records to you on March 6, 2013. Moreover, I understand that the City had collected the responsive records by February 5,



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2013 (the same day that the City actually received your request), but did not receive payment for copying fees associated with your request until March 6, 2013.

Given these facts, I cannot say that the City has violated the APRA by taking an unreasonably long time to produce records responsive to your request, or by denying you access to public records. According to Ms. DeWester, the City has already provided you with all records in the City's or the IMPD's custody that are responsive to your request.

## CONCLUSION

For the foregoing reasons, it is my opinion that the City has not violated Section 3(b) or Section 7 of the APRA. I understand that the City has provided the requested records to you on March 6, 2013, and I trust that this satisfies your request.

Please contact me if I can be of additional assistance.

Best regards,

Jennifer L. Jansen  
Acting Public Access Counselor

Cc: Ms. Samantha DeWester, City Prosecutor and Public Access Counselor