



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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February 8, 2013

Mr. Robin L. Henderson
614 E. Main Street
Madison, Indiana 47250

Re: Formal Complaint 13-FC-37; Alleged Violation of the Access to Public Records Act by the City of Madison

Dear Mr. Henderson:

This advisory opinion is in response to your formal complaint alleging the City of Madison ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joe Jenner, Attorney, responded on behalf of the City. His response is enclosed for your reference. I granted your complaint priority status pursuant to 62 IAC 1-1-3(3).

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the City on January 17, 2013. On January 22, 2013, you provide that you spoke with Mr. Jenner regarding the status of your request. As of February 4, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the City has failed to respond to your request in any fashion.

In response to your formal complaint, Mr. Jenner advised that City acknowledged the receipt of your request in writing on January 17, 2013, the date on which it was received. A copy of the City's written acknowledgement is enclosed for your reference. The City is now in the process of determining if it maintains any records that are responsive to your request and will inform you when its final response is complete.

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. The City is a public agency for the purposes of the APRA. *See* 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 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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days *of receipt*, the request is deemed denied (emphasis added). *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. You allege that the City has never acknowledged the receipt of your request in writing; the City has responded that it provided written acknowledgement of the receipt of your request on the date it was received. The Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. As such, if the City acknowledged in writing the receipt of your request on the date it was received, it complied with section 9(b) of the APRA in response to your request.

Regardless of the timing of the written acknowledgement, Mr. Jenner has advised that the City has commenced the process of determining whether it maintains any records that are responsive to your request. Under the APRA, a public agency shall provide records that are responsive to the request within a reasonable period of time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(b) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* 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. *See* I.C. § 5-14-3-7(c). 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*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*. Thus, the City would be required to produce all records, minus any exceptions, within a reasonable period of time of the date of receiving your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that if the City acknowledged the in writing the receipt of your request on the date it was received, it complied with section 9(b) of the APAR in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Joe Jenner