



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 3, 2013

Sent via email transmission

Mr. Christopher P. Hartley
1724 E. 12th Street
Indianapolis, IN 46201

Re: Formal Complaint 13-FC-71; Alleged Violation of the Access to Public Records Act by the Office of Corporation Council for the City of Indianapolis

Dear Mr. Hartley:

This is in response to your formal complaint alleging the Office of Corporation Council for the City of Indianapolis (the "City") 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 City's Office of Corporation Council. Her response is enclosed for your reference.

BACKGROUND

Your complaint appears to allege that the City violated the APRA by failing to produce records you requested within a reasonable time, or by failing to respond to your request for a status update on your original request within a reasonable time.

In an email sent to Ms. Andrea Newsom, Chief Deputy Corporation Counsel, on January 4, 2013, you sought to amend your earlier records request¹ to include "the entire Oracle database" containing information about public safety incidents in the City of Indianapolis. Ms. Zaida Maldonado-Prather responded to your request via email on January 11, 2013, informing you that the City had initiated a search for records responsive to your request. Ms. Maldonado-Prather also noted that responsive records would be examined to determine "whether they contain any material which by statute must or may be withheld from public inspection and copying", and that the City would notify you when this process has been completed.

¹ I understand that your earlier request, originally made to the City on November 27, 2012, was the subject of formal complaint 12-FC-348. The Public Access Counselor issued an advisory opinion addressing this earlier complaint on January 4, 2013 – the same day that you submitted the instant request (revising your November 27, 2012 request) to the City.

You emailed Ms. Maldonado-Prather on Friday, February 15, 2013 requesting an update on the status of your request. You then filed a formal complaint on February 28, 2013, noting that as of the filing of your complaint, you had received neither a response to your February 22, 2013 email from the City nor copies of the records you requested.

Ms. DeWester's response on behalf of the City confirms the factual outline regarding your previous correspondence and request for records submitted to the City. 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. Further, Ms. DeWester notes that the City believes that it met its statutory obligations under the APRA in responding to your initial request. Ms. DeWester also states that as your February 22, 2013 email was a request for an update on the status of your initial request and thus was a "continuation of the first [r]equest submitted on January 4, 2013 and properly responded to on January 11, 2013", the City does not believe it had an obligation under the APRA to respond in to your second email in writing.

Ms. DeWester also notes that your request for the "entire Oracle database", which is a public safety information database, essentially requests "access to a computer software system", and that you are not a licensee for this system. Further, Ms. DeWester states that "[a]fter additional investigation, it has been discovered that the Oracle database is not compatible with other software systems such as Microsoft Excel, which would allow OCC or the Department to download the Request into a spreadsheet or other compatible software," and that the City "would be required to generate a new report and computer program that would allow the transfer of the information." Ms. DeWester submits that the APRA does not require an agency to create or generate new reports or programs to satisfy a request for public records. Further, Ms. DeWester asserts that a copy of the entire Oracle database, if it is possible to create a copy given the expansive nature of the database, would contain a large volume of confidential information. According to Ms. DeWester, access to the Oracle database is restricted to law enforcement personnel.

Finally, Ms. DeWester explains that your request is "voluminous in nature". She also notes that the City has recently undergone a change in the City public access counselor, and has a large volume of pending public records requests. Ms. DeWester opines that given these factors and the voluminous nature of the request at issue in your complaint and a second public records request you have pending with the City, 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 confidential or



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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). Here, the City did respond to your January 4, 2013 email on January 11, 2013, which is within the time limitation imposed by the APRA.

The APRA does not require a public agency to provide a requestor with a specific date the search for records will be completed, or to provide a requestor with a status update regarding the search at specific, pre-determined time intervals. Because your February 15, 2013 email was merely a request for an update on the status of your initial request and not a new request for public records, the City had no obligation under the APRA to issue an additional written response within seven days. However, in keeping with the spirit and intent of the public policy behind the APRA, I would encourage the City to make every effort to respond to requests for status updates within a reasonable time.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. 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 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. 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. However, I cannot say based on the information provided in the complaint and in the City's response, I cannot say that the City has acted contrary to section 7 of the APRA.

A public agency is not required to create or compile a record that does not already exist. This is because the APRA requires that a public agency disclose a public record, which is defined as any material that is "created, received, retained, maintained, or filed by or with a public agency." I.C. 5-14-3-2(m). Where records or information are stored in an electronic database that may be manipulated and sorted, the public agency must make "reasonable efforts" to provide a copy of the data. As the Public Access Counselor explained in response to your formal complaint filed December 5, 2012, Section 3(d) of the APRA requires the City must make *reasonable efforts* to provide a copy of all disclosable data stored in the database in response to your request, provided

that the medium requested is compatible with the City's storage system. *See also Opinion of the Public Access Counselor 08-FC-146.*

The City asserts that the Oracle database in question is not compatible with other computer programs such as Microsoft Excel, and thus that even if the City provided a copy of the entire database (minus any nondisclosable data) you would not automatically be able to access the information contained therein. As I understand it, you would have to acquire the requisite program license (presumably an Oracle license) compatible with the database in order to access and manipulate the data.

The City is entitled to charge a fee that is the direct cost of supplying the information on a disk or other electronic format. See IC 5-14-3-8(g). Further, if the City must reprogram its computer systems to separate and remove any nondisclosable data from disclosable data, the City may charge you a fee to recover the City's direct costs in performing this task. See IC 5-14-3-6(c). As you know, "Direct cost" is defined in IC 5-14-3-2(c). I would encourage the City to provide information concerning any direct costs incurred to you prior to undertaking any work to copy disclosable data to fulfill your request. Moreover, I do not read the APRA to require the City to create an entirely new computer program to allow you to access the data; rather, you would be responsible to acquire or create a computer program and any required licenses to allow you to access the data.

In the alternative, the City could provide responsive records from the database in hard copy, as I understand the City has offered to do. Moreover, I understand that the City has offered to provide disclosable information contained within the Oracle database through other City databases or systems that do not also contain confidential or non-disclosable information.

To apply these standards to the present situation, the City attributes the delay in producing the records you requested to the fact that your request is "extremely voluminous in nature", that responsive records may require redaction to avoid disclosure of confidential or private information before they can be made available for your review, and that some reprogramming of the City's computer systems would be necessary to supply you with disclosable portions of the "entire Oracle database". Further, according to Ms. DeWester, the City is working to accommodate your request, in part by offering access to disclosable data through other City-maintained databases, and will notify you as soon as records responsive to your request are available.

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. In my opinion, if the City produces records responsive to your request within the next ninety (90) days, the City will have met the reasonableness requirement under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City has not violated Section 3(b) of the APRA by not providing responsive records to you as of February 15, 2013. Further, it is my opinion that the City will have complied with requirement to produce records in a reasonable



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period of time under Section 3(b) of the APRA if the City produces responsive records within the next ninety (90) days. If you wish to receive the records in electronic format you would be responsible to provide or acquire any necessary computer program or license needed to access the data in the program format as provided by the City.

Please contact me if I can be of additional assistance.

Best regards,

Jennifer L. Jansen
Acting Public Access Counselor

Cc: Ms. Andrea DeWester