



STATE OF INDIANA

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September 30, 2013

Ms. Renee J. Kabrick, Esq.
Jasper City Hall
P.O. Box 29
Jasper, IN 47547

Re: Informal Inquiry 13-INF-52; Reasonable Particularity

Dear Ms. Kabrick:

This is in response to your informal inquiry regarding the reasonable particularity standard in regard to a request for records pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

On August 19, 2013, the Editor/Publisher for the Dubois County Free Press, Mr. Matt Crane, submitted a request to the City of Jasper ("City") for copies of the following records:

"[a]ny letters of intent to sue the city has received in 2013. Letters or notices regarding impending lawsuits against (sic) the City of Jasper and its Dept's (sic)"

It is unclear if you responded to this request; however, you submitted a request for an Informal Opinion on September 10, 2013.

As applicable here, the City does not feel the request was stated with reasonable particularity and seeks an opinion to clarify the meaning of reasonable particularity as defined in Ind. Code § 5-14-3-3(a)(1).

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 of Jasper is a public agency for the purposes of the APRA. See Ind. Code § 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 Ind. Code § 5-14-3-3(a).

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

Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(c). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The APRA requires that a records request "identify with reasonable particularity the record being requested." Ind. Code § 5-14-3-3(a)(1). "Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176; 12-FC-13.*

Because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requestor for more information rather than simply deny the request. See generally Ind. Code § 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13.*

In the present case, you have stated Mr. Crane's request does not contain a sufficient level of detail. You also claim the request is overly broad and unduly burdensome. The APRA does not contain any reference to those terms, per se; however, those considerations fall under the umbrella of potentially interfering with the normal operations of a public agency. An agency is not required to immediately produce the records, but rather it has a reasonable amount of time to locate and disclose them. The reasonable standard has been addressed in several other opinions and is determined on a case-by-case basis.

The Public Access Counselor is not a finder of fact; therefore, I cannot state with confidence whether the City has an extraordinary amount of records relating to pending litigation. Taken at face value, it would not seem the City the size of Jasper would have a large volume of threatened lawsuits. That being said, if taken for fact and the records

requested are voluminous in nature, it is reasonable you deny the request and negotiate with Mr. Crane that he submit clarification of the records he seeks.¹

As provided in prior advisory opinions, if an agency needs clarification of a request or believes the request is not reasonably particular, the proper response by the agency would be to seek further clarification rather than denying the request. Accordingly, I strongly encourage any public agency to work with a requestor to come to a mutual understanding of the records being sought. You state “such a request appears to be a fishing expedition”. Please be advised the individual requesting the records does not have to state the purpose for the request (Ind. Code § 5-14-3-3(a)(2)).

A responsive, cooperative and communicative agency is a transparent agency. You state it is “always the desire of the City to cooperate with reasonable requests for information.” That epitomizes the spirit of open access and transparency and I strongly encourage the City to make the very best efforts to follow that philosophy.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

cc: Matt Crane

¹ Also note, the work product of an attorney would not be subject to release pursuant to the request. See Ind. Code § 5-14-3-2(r); § 5-14-3-4(b)(2).