

November 21, 2003

Mr. James H. Malcolm
306 South Third Street
Goshen, IN 46526

Re: Formal Complaint 03-FC-109

Alleged Violation of the Access to Public Records Act by the City of Goshen

Dear Mr. Malcolm,

This is in response to your formal complaint, which this office received on October 22, 2003. In it, you allege that the City of Goshen (the "City") violated the Access to Public Records Act (the "APRA"). Specifically, you allege that Ms. Shannon Marks, the City's Legal Compliance Administrator, failed to respond to your request for access to public records within the twenty-four (24) hour period required by statute. The City responded to your complaint by letter dated October 24, 2003. A copy of the City's response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the City did not violate the Access to Public Records Act.

BACKGROUND

You allege that you requested information concerning a proposed City parking lot project. You allege that you delivered your request to Ms. Marks, and that Ms. Marks acknowledged receipt of your request. Enclosed with your complaint is your request; I observe that your request is marked received by "S. Marks" at 10:00 a.m. on October 21, 2003. You allege that you requested access to enable you to decide whether you should take additional action on a formal complaint you filed with the City's planning department. You allege,

In as much as construction activities began after the complaint was delivered, time is of the essence. Although I have not been denied access, I believe the lack of timely response to my request within the 24 hour period has severely limited my options to ensure enforcement of the provisions of the Zoning Ordinance.

Finally, you allege, “Access to the documents requested would allow me to ascertain [sic] if and when proposals were presented to the Board of Public Works for review and approval prior to the start of construction.”

In its response, the City acknowledges receipt of your request at approximately 10:00 a.m. on October 21, 2003. The City states that at the time you made your request, Ms. Marks told you that she would see what information the City had in addition to that which had already been disclosed to you. The City also states that Ms. Marks responded in writing to you on October 22, 2003. The City encloses a copy of a letter addressed to you dated October 22, 2003. The City alleges that it did not violate the APRA, and notes that you acknowledge that you were not denied access to a public document. The City alleges that you were requested to identify the public records you wanted to inspect with reasonable particularity, and that your lack of specificity is one reason for the delay in providing you access to public documents. Finally, the City alleges that it responded to you within twenty-four (24) hours.

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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” IC 5-14-3-1.

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. In addition, a public agency may respond by asking the requestor to specify with reasonable particularity which records the requestor seeks to inspect and copy. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

When a person appears in a public agency's office and hand-delivers a written request, the public agency has twenty-four (24) hours from the receipt of that request to respond; the failure to do so constitutes a denial under the APRA. IC 5-14-3-9(a). When a person delivers a request by mail or facsimile, the public agency has seven (7) days from the receipt of that request to respond; again, failure to do so constitutes a denial under the APRA. IC 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. IC 5-14-3-9(d). Beyond the initial response, public agencies must produce public records within a reasonable time period given the nature of the request.

Here, the City alleges that it responded to your request verbally at the time you made your request and in writing on the next calendar day after receiving your request. You enclose a copy of your request, which is marked as being received by "S. Marks" on October 21, 2003, at 10:00 a.m. The City enclosed a letter responsive to your request addressed to you and dated October 22, 2003. The letter states that the City will disclose the public records responsive to your request and asserts that your request was not reasonably particular. In addition, you state, "I have not been denied access. . . ." Therefore, it is my opinion that the City did respond within twenty-four (24) hours of receiving your request, as required by statute, and that the City did not violate the APRA by failing to respond to your request.

CONCLUSION

Because the City responded to your hand-delivered request for access to public records within twenty-four (24) hours of receiving your request, it is my opinion that the City did not violate the Access to Public Records Act.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Shannon Marks, Legal Compliance Administrator, City of Goshen