

October 8, 2003

Ms. Donna K. Ennis  
8304 Indian Caves Court  
Charlestown, IN 47111

Re: 03-FC-80; *Alleged Denial of Access to Public Records by the City of Charlestown*

Dear Ms. Ennis,

This is in response to your formal complaint, which was received on September 8, 2003. You have alleged that the City of Charlestown (the "City") violated the Indiana Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that you were wrongfully denied access to a tape-recorded audio record of the February 17, 2003, City Council meeting, because the tape you were given to copy was blank and someone removed the tape and switched it with a new tape. Ms. Donna S. Coomer, Clerk Treasurer of the City, responded in writing to your complaint. A copy of her response is enclosed for your reference. It is my opinion that the City did not violate the APRA by failing to provide a tape containing an audio record of the February 17 meeting.

#### BACKGROUND

According to your complaint, on August 26, 2003, you hand-delivered a public records request to Ms. Coomer. You requested copies of the following cassette tapes:

- September 2, 2002, City Council meeting;
- All City Council meetings in January 2003;
- All City Council meetings in February 2003; and
- March 3, 2003, City Council meeting.

You indicated in your request that you would pick up the copies during the afternoon of August 29, 2003. On the afternoon of August 26, 2003, within the time frame established by the APRA, Ms. Coomer responded to your request by informing you that she would be unable to make the requested copies within the stated time period. You then offered to copy the tapes at Ms. Coomer's office using your own equipment, and Ms. Coomer assented. You allege that you and Ms. Coomer agreed that you would go to her office at 3 p.m. on August 29, 2003, to copy the tapes. However, when you arrived at her office at that time, she was out of the office and you were told that you would have to come back later. Upon your persistence, you were allowed to

make the copies under the supervision of Nancy Rodgers. You allege that when you got to the February 17, 2003 Council Meeting, you put the tape in and it was a brand new tape with nothing on it. You allege that someone had removed the tape bearing the recording of the meeting and switched it with a new tape. You then filed your complaint with this Office.

In her response to this office, Ms. Coomer advised that the tape from the February meeting did not record. Ms. Coomer advised that she has retained a hard copy of the minutes in her office, and that you were informed of the same but did not look at them. Ms. Coomer denied that she switches tapes.

### 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. The City is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. The City is also a governing body for the purposes of the Open Door Law, Indiana Code chapter 5-14-1.5. Ind. Code §5-14-1.5-2(b). Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Governing bodies of public agencies are required to create memoranda of their meetings and make those memoranda available for inspection and copying within a reasonable time after the meeting takes place. Ind. Code §5-14-1.5-4(b). Meeting minutes are not required under the Open Door Law, but if created, must be available for public inspection and copying. Id. Also, the Open Door Law does not require that the governing body make audio or video recordings of public meetings. Id. If the governing body chooses to do so of its own accord, however, such recordings would become public records subject to disclosure under Ind. Code § 5-14-3-3.

It is the responsibility of the public agency to respond to requests for access to 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. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

Here, the City attempted to make an audio recording of the February 17, 2003, City Council meeting. The City was not required to do so. The City also took minutes of the meeting, though it was not required to do so. The City disclosed what it thought was a recording of the February 17 meeting, but as you discovered, there is no such recording. The City offered to disclose to you the minutes of the meeting as a substitute, but you declined. Had the tape actually recorded the meeting, it would have been a violation of the APRA to deny you access to

the recording. However, it is a violation of neither the Open Door Law nor the APRA to fail in an attempt to make an audio recording of a public meeting.

#### CONCLUSION

It is my opinion that the City did not violate the APRA when it provided you a tape which the City thought contained a recording of the February 17, 2003 City Council meeting. It is also my opinion that a governing body is not required to make a video or audio recording of a public meeting, but that if it does so, the recording is a public record subject to the terms of the APRA.

Sincerely,

Sandra K. Bowman  
Acting Public Access Counselor