

August 26, 2003

Mr. Charles Garnette
4802 Lafayette Esplanade
Fort Wayne, IN 46806

Re: 03-FC-63; *Alleged Denial of Access to Public Records by the City of Fort Wayne*

Dear Mr. Garnette:

This is written in response to your formal complaint, which was received on July 28, 2003. You have alleged that the City of Fort Wayne ("City") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the City, which was hand delivered, but that you did not receive a response to your request. Ms. Carol Smith, Associate City Attorney, responded in writing to your complaint and a copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you hand-delivered a request for copies of various public records related the "City's funding and support" of the Fort Wayne Neighborhood Housing Partnership on July 15, 2003.¹ When you did not receive a response to your request you filed your complaint with this Office.

In response to your complaint, Ms. Smith acknowledged that the City may not have responded to your request for records within the twenty-four (24) hour period required under the APRA. The City has now responded directly to you concerning your

¹ You also referred to a public records request that you made on April 9, 2003. However, Indiana Code section 5-14-5-7 requires that formal complaints be filed within thirty (30) days of the denial of access. Therefore, you April 9, 2003 public records request will not be addressed in this opinion.

request for public records. According to Ms. Smith's letter to you dated August 7, 2003 and in a telephone conversation I had with Ms. Smith on August 25, 2003 all of the documents in the City's possession were copied and made available to you

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." 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. 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).

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. For requests that are hand-delivered, a denial is deemed to have occurred if twenty-four (24) hours elapse after the agency receives the request and there has been no response. Ind. Code §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 the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you hand delivered your request to the Mayor's Office and did not receive your request within twenty-four (24) hours after the City received it. Since I have been provided no evidence that the City responded to your request, it is my opinion that the City did not respond to your public records request. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, it is important to note that the City has now provided you with all the records in their possession regarding this matter.

CONCLUSION

It is my opinion that the City of Fort Wayne's failure to respond to your written request for access to public records within twenty-four (24) hours after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

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Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Carol Smith, Associate City Attorney
City of Fort Wayne