

February 4, 2004

Mr. Darnail Lyles
504 Broadway, Suite 719
Gary, Indiana 46402-1929

*Re: Formal Complaint 04-FC-09
Alleged Denial of Access to Public Records by the Mayor's Office, City of Hobart*

Dear Mr. Lyles:

This is in response to your formal complaint alleging that the Mayor's Office, City of Hobart (Mayor's Office) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3), when it failed to respond to your December January 6, 2004, request for records within the time period allotted by statute. The Mayor's Office responded to your complaint, and a copy of that response is enclosed for your reference. For the reasons set forth below, I find that the Mayor's Office did not violate the APRA.

BACKGROUND

On January 6, 2004, you signed a letter addressed to Mayor Linda Buzinec, City of Hobart, requesting access to records you assert are maintained by the Hobart Police Department. The Mayor's Office received your letter on January 7, 2004. Your letter requested a response within seven business days. On January 15, 2004, prior to receiving any response from the Mayor's Office, you signed and mailed your complaint to this office alleging that the Mayor's Office's failed to timely respond in violation of the APRA.

On January 16, 2004, the Mayor's Office responded to your public records request. The Mayor's Office responded that it did not maintain any records responsive to your request, and that any responsive records would be maintained by the Hobart Police Department. Thereafter, on January 26, 2004, the Mayor's Office submitted a response to your complaint. In that response, the Mayor's Office noted that it timely responded to your January 6, 2004, request on January 16, 2004, and that the response properly noted that the Mayor's Office, to which you directed your request, did not maintain any records that were responsive to the request and that any such responsive records would be maintained by the Hobart Police Department.¹

¹ The response further indicates that you subsequently directed a separate request to the Hobart Police Department, and that the Hobart Police Department timely responded to that request. That request and response are not at issue here.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must produce or expressly decline to produce any documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. If the agency does not maintain any documents that are responsive to the request, it should indicate that in a timely response to your request. At bottom, when a public records request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. IC 5-14-3-9(b). If that period of time elapses without any response, the request is presumed denied. IC 5-14-3-9(b). When a public records request is denied, the requesting party may bring an action under the APRA (IC 5-14-3-9(d)), or may file a formal complaint with this office (IC 5-14-5-6).

Because the Mayor's Office did in fact respond in substance to your public records request with information indicating that the Mayor's Office did not maintain any responsive records, the only question is whether the response was untimely pursuant to Indiana Code 5-14-3-9(b).² Although the Mayor's Office's response is alleged to be tardy by two days and thus in violation of the APRA on that basis, I decline to find a violation under these facts.

Your request was clearly received by the Mayor's Office on January 7, 2004. Accordingly, left to the plain language of the statute, the Mayor's Office owed you a response on or before January 14, 2004. *See* IC 5-14-3-9(b). However, and while I doubt you meant to do so, you invited a later response in your records request wherein you requested a response within seven *business* days. The January 16, 2004, response was submitted within seven business days of the receipt of the request. Certainly, as indicated by the response to your complaint, the Mayor's Office understood its January 16, 2004, response to be timely. While the additional days for a response may not have been intended, I am not inclined to find a violation of the APRA given the language of your request.

² In correspondence submitted after you filed your complaint, you also assert that the January 16, 2004, response is a "bad faith denial" because the Mayor is the highest office holder in the City of Hobart and was responsible for disseminating the request to the appropriate city agency. The APRA does not support this assertion. Indiana Code 5-14-3-2 defines public records as records maintained by individual public agencies, and defines and recognizes distinctive agencies within the same branch of state and local governments. IC 5-14-3-2. Your request to one agency cannot be held to be a request to other agencies simply because they are in the same branch of government.

CONCLUSION

For the reasons set forth above, I find that the Mayor's Office did not violate the APRA by failing to timely respond to your request for records.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. John P. Bushemi