

June 23, 2005

Sent Via Facsimile

David Paul Allen
5231 Hohman Avenue, Suite 703
Hammond, IN 46320

Re: Formal Complaint 05-FC-106; Alleged Violation of the Access to Public Records Act by the City of Hammond and the Common Council of Hammond

Dear Mr. Allen:

This is in response to your formal complaint alleging that the City of Hammond (“City”) and the Common Council (“Council”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for certain records. I find that the City did not respond properly to your request except for one item, and the Council did not respond to your request in accordance with the APRA.

BACKGROUND

You hand-delivered an April 22, 2005 letter to the Mayor of Hammond requesting eight categories of records. You indicated in your letter that you were also sending copies of the letter to the City Controller for item #8, to the Clerk for items # 1,2,3, and 4, and to the President of the Common Council, for items #1, 2, 3, 4, 5, 6, and 7. You also specified that you were asking for items 1 through 8 from the City of Hammond, and sending “redundant” requests to the other office holders.

You filed your formal complaint with my office on May 24, 2005. You complain that although the Clerk and Controller responded to your request, no response was forthcoming from either the City or the Council as to items #5, 6, and 7.

I sent a copy of your complaint to the City and the Council. I enclose both written replies for your reference. The Council, by its attorney Robert G. Berger wrote that the Council does not have any of the documents that you requested. He acknowledged that a response to that

effect should have been issued to you, but the Council mistakenly assumed that if it had no responsive records, no response would be necessary.

In the City's complaint response, attorney Kristina Kantar stated that "upon inspection as City Attorney I determined only request #8 would possibly be located at the Controller's Office. The rest of the request would be available from other office holders..." The Controller's response was limited to item #8.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for a record in person is required to respond to it within 24 hours, or the request is deemed denied. IC 5-14-3-9(a). In this matter, you hand-delivered your request to the City and the Council on Friday, April 22, 2005. As you stated in your letter, a written response would have been due before the close of business on Monday, April 25.

The Council admits its error in not responding to your request at all. Although it states that it has no responsive documents, the Council was still required to state this in a response to you within 24 hours of receiving the request. The Council's failure to respond was a violation of the APRA.

With respect to the City, the Controller (an office of the City) issued the sole response as to item #8 only. Although ordinarily an agency might interpret a request for records directed to various unrelated offices as ambiguous with respect to which office is responsible for responding, your letter made clear that you were requesting a response from the City for items 1 through 8, even as you were making requests for some of the same items from the Clerk, Council and Controller. The City violated the Access to Public Records Act in its failure to respond with respect to items #1 through 7.

In her complaint response, Ms. Kantar was less than clear whether the City maintains any of those records. The statement that the "rest of the request would be available from other office holders" is ambiguous. It could mean either 1) the City does not maintain any of those records and what office may maintain them; or 2) the City believes that the other offices, which are not controlled by the City, are primarily responsible for producing those records. The former is not a violation of the APRA, but the latter is. I often counsel public agencies that when the agency has no record that is responsive to a request, it should state that clearly and unambiguously.

CONCLUSION

For the foregoing reasons, I find that the City of Hammond and the Hammond Common Council failed to respond timely to your request for records, and this failure was a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kristina Kantar
Robert Berger