

February 10, 2005

Nick Wilson  
429 Toschlog Road  
Richmond, IN 47374

*Re: Formal Complaint 05-FC-11; Alleged Violation of the Access to Public Records Act by the City of Richmond and Richmond Police Department*

Dear Mr. Wilson:

This is in response to your formal complaint alleging that the City of Richmond (“City”) and the Richmond Police Department (“Department”) violated the Access to Public Records Act (“APRA”) by failing to respond timely to your e-mailed request for records, and by failing to give you some of the records that you seek.

#### BACKGROUND

You have sought from various members of the City and of the Department, certain records. You began seeking these records via e-mail transmissions sent on December 15, 2004. In one December 15 e-mail, you wrote to Diane Whitehead, who works for the City as a community policing liaison. Your message began by stating “Just need some information.” Then you asked the following questions:

“How many officers are employed by RPD; how vehicles are assigned to RPD; how many take home cars does RPD have; how many of these take home cars leave the city; how is the city compensated by officers who take cruisers home that live out of the city; what is the policy for personal use of these take home cars; how is mileage track to verify no missuse (sic) of cars. If you cannot answer this (sic) questions please refer me to someone who can.”

You state that this e-mail was never responded to. You also sent a message to “pklusman” for information about how many cell phones the city owns and who has those phones. You were also seeking access to all city phone bills. At some point, you requested from Chief Wolski how many cell phones are issued to officers, what officers

have them, and what the cost is. On December 25, and December 30, 2004, you sent messages to Mayor Sally Hutton demanding that the information in your previous messages be produced by January 1<sup>st</sup>. From the time of your December 15 request for information and the time that you filed your complaint, you apparently received responses from the Department to many of your informational requests. However, there are several records that you have not yet received.

You allege in your formal complaint, filed on January 10, 2005, that your requests for information have gone “unanswered.” More specifically, you appear to allege three violations: 1) that the time limits to respond to requests for records have been violated by various City and Department officials; 2) that certain monthly mileage statements or reports of individual mileage of police officers was denied to you improperly; and 3) that you are being denied financial records showing payment that an officer made for use of take home cars and cell phone usage, where the City has refused to give you a date when you may expect to receive this information.

I sent a copy of your complaint to the City and the Department. No response was received on behalf of the City, but the Department’s response was supplied by Chief Wolski. I enclose a copy of the Department’s response for your reference. In this response, the Chief states that some of the information that you sought had to be compiled, and was done so in as timely a fashion as possible. Chief Wolski included copies of e-mail correspondence on these issues.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The agency is not necessarily required to send the records within the time that its response is due. There are no specific deadlines in the APRA for a public agency to produce records. So long as the public agency produces records within a reasonable time, the agency has not violated the APRA. The determination of a reasonable time is not given to an exact formula. Rather, it depends on a number of factors, such as whether the records are stored off-site, whether legal counsel must review the request to determine whether documents are nondisclosable, and the number of requests received.

Particularly important for this formal complaint is the rule that a public agency is not required to compile records to respond to a request for information. If the public agency does not have a record or records that are responsive to a request for a record or for information, the agency may respond by stating that it does not maintain such a record.

Your message of December 15 could have been mistaken for a request for information (which is asserted by Chief Wolski). Your message ended with an invitation to Ms. Whitehead to refer you to a person who could answer the questions if she did not know the answers. It appears Ms. Whitehead sent your e-mail to the Department for response without also responding to you that she was sending your message along to the proper individual. In fact, the Department did compile this information and sent it to you in an e-mail message on January 4, 2005, when Chief Wolski returned from a two-week vacation. To the extent that the City should have detected that you were seeking records, it should have responded within seven days of December 15.

Ultimately, you received some information, but are seeking these records from the Department:

- the written reports that list each officer's starting and ending mileage for the month, or the "mileage record";
- a report showing how many officers responded while off duty requiring the use of the take home car to respond to the situation.

You are also seeking from the City financial department records showing payment by individual officers for overage charges on their cellular phones and assessment fees for take home police vehicles that the officer takes outside the city.

With respect to the Department's obligation to provide you with mileage records, the Department is relying on IC 5-14-3-4(b)(8), which exempts from disclosure at the agency's discretion "personnel file information," with exceptions not relevant here. The Department states in its response to your complaint that the actual mileage record that is reported for each officer at the end of the month appears on the officer's attendance record. Yet, Chief Wolski stated in a January 4 e-mail message that every division or shift submits a written report that lists each officer's starting and ending mileage for the month. It appears that there are monthly reports, by division or shift, showing the officers' mileage. Although this information may also appear on an attendance record, whether it is on an attendance record or in a report may not matter. I express doubt that it is personnel file information in either case. This office has observed that time card records are not typically kept as personnel records, but rather as accounting, finance or payroll records and thus would not be subject to nondisclosure under the personnel file exemption. That said, it is the public agency's burden to "prove that the record falls within" one of the categories of exemption and to "establish the content of the record with adequate specificity and by not relying on a conclusory statement or affidavit." IC 5-14-3-9(g). *See Opinion of the Public Access Counselor 04-FC-96.*

With respect to your request for a report showing how many officers responded while off duty requiring the use of the take home car to respond to a situation, Chief Wolski has agreed to provide this information by compiling it from each officers' overtime records. The Department is not required to compile this information in a report where no report exists, as stated above.

With respect to the information about cell phone overage charges and assessments for use of take home cars, you appear to be complaining that the City is not producing the record in a timely manner, where the Mayor has told you that the financial officer is on sick leave. As stated, there are no strict timeframes for production of a record, so long as the time required to produce the record is reasonable. Assuming that the financial officer must attend to this record request, his or her illness may prevent more timely production. In that event, the public agency should communicate this reason to the requester and offer a reasonable estimate as to when the record would be produced.

I note that the Chief supplied me with a two page report that appears to contain individual's names and figures corresponding to each person's "yearly deduction." I am including this report in the material that Chief Wolski sent me in response to your complaint.

#### CONCLUSION

For the foregoing reasons, I find 1) that you are not entitled to any record that the City or Department do not maintain; 2) that you may be entitled to the mileage reports in spite of the Department's assertion that they are personnel file information, and 3) the production of certain financial records was not untimely and may have been fulfilled in response to your complaint.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chief Kris Wolski  
Mayor Sally Hutton