

August 1, 2005

Derrick Hagerman  
7251 Belfonte Lane  
Terre Haute, IN 47802

*Re: Formal Complaint 05-FC-132; Alleged Violation of the Access to Public Records Act by the City of Terre Haute.*

Dear Mr. Hagerman:

This is in response to your formal complaint alleging that the City of Terre Haute ("City") violated the Access to Public Records Act ("APRA") by failing to respond to your request for public records.

#### BACKGROUND

On June 30, 2005 you filed two complaints alleging violations of the APRA by the City. Your complaints were consolidated under formal complaint # 05-FC-132. Your first complaint alleged that you hand-delivered a request for public records to the City's attorney at a City Council Meeting on June 9, 2005. As of June 28, 2005 you had not received a response from the City. On June 22, 2005 at 3:30 p.m. you hand-delivered a second request. You state that the letter was delivered to the secretary of the legal department for the City. You indicate that as of 3:30 p.m. on June 23, 2005 you had not received a response; however, on June 24, 2005 you received a letter from the City's attorney, Kendall Boyd.

My office forwarded a copy of your complaint to Mr. Boyd. Although Mr. Boyd left several messages for my staff attorney, she was not able to reach Mr. Boyd through return phone calls. No written response has been received on behalf of the City.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 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 (7) days in which to respond. IC 5-14-3-

9(b). For requests that are delivered in person, the agency must respond within twenty-four (24) business hours. IC 5-14-3-9(a). A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made in writing, the agency must respond to the request in writing. IC 5-14-3-9(c). 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 (7) days of its receipt of the request, the request is deemed denied.

Both of your requests were in writing and were hand-delivered to the City. Therefore, the City had a duty to respond within twenty-four (24) business hours of receipt of the requests. As the requests were in writing, the City was required to respond in writing. As of June 28, 2005 you had not received any response to your request of June 9, 2005. The City's failure to respond to the June 9, 2005 request is a violation of the APRA.

However, it appears that the City did respond to your June 22, 2005 request. You did not provide a copy of the letter, nor did you state whether the letter was received by mail. You merely state that you received a letter from the City on June 24, 2005. If the City mailed the letter to you via U.S. mail, it is likely that it was placed in the mail sometime on June 22nd or 23rd in order to be received by you on June 24, 2005. The APRA does not require that the requestor must *receive* the response within twenty-four (24) hours; it merely requires the agency to *make* the response within twenty-four (24) hours. Where a written response is required it is probable that the response will not be received within twenty-four (24) hours when time for mailing is taken into consideration. If the City placed its written response to you in the mail within twenty-four (24) hours of receiving the request it has complied with its statutory duty to respond to the request.

#### CONCLUSION

For the foregoing reasons, I find that the City of Terre Haute violated the Access to Public Records Act when it failed to respond to your June 9, 2005 request for public records. You have not alleged sufficient facts to find that the City of Terre Haute violated the Access to Public Records Act when responding to your June 22, 2005 request for public records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Kendall Boyd