

April 27, 2005

Sent Via Facsimile

Mr. Douglas M. Wright
4848 Jefferson Street
Gary, IN 46408

Re: Formal Complaint 05-FC-58; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Wright:

This is in response to your formal complaint alleging that the City of Gary (“City”) violated the Access to Public Records Act by failing to give you records. I find that the City violated the Access to Public Records Act.

BACKGROUND

You filed your formal complaint on March 28, 2005, after having received no response from the City of Gary to your March 9, 2005 request for various records regarding a grant. The City responded in writing to your complaint, a copy of which I have enclosed for your reference. In the response, Mr. Husain G. Mahmoud, City Controller, states that it is the policy of the City to respond within 7-10 business days. He further explained that the law department of the City had not indicated any timeframe for submitting the information, and the information you requested is not in his department. He is requesting that the law department submit your request to the city health department.

I have also received a letter dated April 14, 2005 from Luci Horton, attorney for the City. She indicated that certain records were being sent to you, others were not existent, and still others would be available in the law department. Finally, Ms. Horton sought clarification for your request for “other pertinent documentation” demonstrating compliance with HIPAA regulations by April 14, 2004.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A request for records must be stated with "reasonable particularity." IC 5-14-3-3(a)(1). If a public agency receives a request for records in person or over the telephone, the agency is required to respond within 24 hours. IC 5-14-3-9(a). If the agency receives a request via U.S. Mail or facsimile, the agency must respond within seven *calendar* days of the request. IC 5-14-3-9(b). Failure to meet these timeframes is deemed a denial of access under the APRA.

These timeframes in which to respond are not the same timeframes in which the agency must necessarily produce the records. Many factors may determine the reasonableness of the agency's production of the records, including how many records are requested, whether the records are dated and therefore stored off-site, and whether legal counsel must evaluate the records for confidential or nondisclosable portions.

Here, it appears from the City's response to your complaint that it did not respond at all within seven days. This failure to respond is deemed a denial of the records, a violation of the APRA. Mr. Mahmoud's letter indicates that the City's policy is to respond within 7-10 business days. If by "response" he means the time that the City will produce the records, there is nothing wrong with that policy, so long as a letter acknowledging receipt of the request and some indication of how the agency intends to comply is issued to the requester within seven calendar days of the City's receipt of a request for records.

As of April 14, the City has provided some records, and responded to your other requests. I have no information from the City regarding why it took nearly five weeks to obtain the bulk of the records you requested, but this appears to be a rather lengthy production time. Some of the records that were provided were a copy of the current grant agreement, the confidentiality policy, and the HIPAA policy. These would seem to have been readily available to the City.

I note, however, that Ms. Horton's letter itemizes each category of records that you requested, making it easy to see how the City responded to each of your requests. I commend the City's response in this respect, albeit it was not timely as either an initial response under IC 5-14-3-9(b). I also note that the City may seek clarification from you regarding the last record that you requested, involving "other pertinent documentation" that demonstrates compliance with HIPAA regulations. Your request was not stated with reasonable particularity, given that the other specific records you requested would tend to show the City's compliance with HIPAA.

CONCLUSION

For the foregoing reasons, I find that the City of Gary failed to respond in a timely manner to your request, and the records may not have been produced within a reasonable time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Luci Horton
Mr. Husain Mahmoud