

May 4, 2005

Ms. Victoria A. Hedger
774-1 Baltimore Rd.
Valparaiso, IN 46385

Re: Formal Complaint 05-FC-63; Alleged Violation of the Access to Public Records Act by the Gary Urban Enterprise Association

Dear Ms. Hedger:

This is in response to your formal complaint alleging that the Gary Urban Enterprise Association (“GUEA”) violated the Access to Public Records Act by denying you a record. I find that the GUEA did not violate the Access to Public Records Act.

BACKGROUND

You sent a request for records dated March 17, 2005 to the Gary Urban Enterprise Association. You requested “access to and copies of the Crowe-Chizek Report.” You requested the report “in its preliminary and any future draft” be made available for public inspection and duplication. Having heard no response, you filed your formal complaint with my office on April 4, 2005. You indicated in your complaint that the GUEA is supported in whole or part by public funds, making it a “public entity” subject to the Access to Public Records Act (“APRA”).

Subsequent to the filing of your complaint you received a response from Ms. Karen M. Freeman-Wilson dated April 4, 2005. Ms. Freeman-Wilson indicated that the GUEA was denying your request based on the assertion that the GUEA is an Indiana not-for-profit corporation with 501(c)(3) exempt status and as such is not a “public agency” that is required to open its records to the public. Ms. Freeman-Wilson also indicated that your request was being denied “because the report is the subject of an ongoing criminal investigation and disclosure to the public would impair that investigation.” Ms. Freeman Wilson also cited I.C.5-14-3-4 as a basis for the denial.

I sent a copy of your complaint to David Wright, the president of the GUEA Board of Directors. No response has been received from the GUEA.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours. Ind.Code 5-14-3-3(a). It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). If the GUEA were a public agency it would have been required to respond to your request within seven (7) days.

A "public agency" is defined in the APRA at IC 5-14-3-2. An entity that is subject to an audit by the state board of accounts is a public agency under the APRA. IC 5-14-3-2. The burden of proving that an entity is a "public agency" within the meaning of the Access to Public Records Act is on the person asserting his rights under the APRA. *Perry County Development Corp. v. Kempf*, 712 N.E.2d 1020 (Ind. Ct. App. 1999).

Under I.C. 5-11-1-9, certain entities, including for profit and not-for-profit entities, may be subject to audit by the state board of accounts if they meet certain conditions. The determination of whether an entity is subject to audit is the sole responsibility of the state board of accounts. I called the state board of accounts to inquire whether the GUEA is "subject to audit" by that agency. Mr. Mike Bozymski informed me that the GUEA is not subject to audit as it is funded by donations from private businesses.

If an entity is not a public agency, it does not come within the ambit of APRA, and therefore has no duty to comply with it. Because you have not sustained your burden of proving that the GUEA is a "public agency" under APRA, I cannot find that its initial failure to respond to your request or make its records available was a violation of the APRA.

CONCLUSION

For the foregoing reasons, I find that the Gary Urban Enterprise Association did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: David Wright
Karen Freeman-Wilson