

August 10, 2006

Sent Via Facsimile

Anthony Portone
2900 Gary Avenue
East Chicago, IN 46312

Re: Formal Complaint 06-FC-116; Alleged Violation of the Access to Public Records Act by the City of East Chicago

Dear Mr. Portone:

This is in response to your formal complaint alleging that the City of East Chicago (“City”) violated the Access to Public Records Act. I find that the City has not violated the Access to Public Records Act.

BACKGROUND

You claim in your formal complaint that the City, via its Law Department and Ms. Carmen Fernandez in particular, denied you access to records. You had sent a request to the City on May 8. When you called the City to inquire of the status of your request, you learned that the City had not received any May request. You faxed on June 5 a second request for records to the City.

You describe in your complaint letter various times since June 5 that you called the Law Department to speak to Ms. Fernandez, attorney for the City, or paralegal Ms. Rodriguez to inquire of the status of your June 5 request. You allege that although you left messages, your telephone calls were never returned. You state that as of July 10, the date of your formal complaint, you have not received any records from the City or the status of your request. The records you requested are:

“Correspondence, Professional Service Agreements, invoices, check payments, proposals, letters, reports (Legal studies, recommendations, consulting, RFP preparations, RFQ preparations, bid preparations, cost comparisons, etc.), credits, debits, outstanding payables, general ledgers, litigation or pending litigation documents and contracts including but not limited to any and all other documentation by and between the City of East Chicago, the City of East Chicago Sanitary District or any other City of East Chicago unit of government involving the City of East Chicago and the following company, its associates, partners, paralegals, employees, its affiliates, subsidiaries, assigns, nominees, agents, officers, directors and shareholders from December 1, 2004 to and including May 8, 2006: #1) Morgan, Lewis & Bockius, LLP...”

I sent a copy of your complaint to the City. The City responded in a letter from Mr. Christopher Rizzo, attorney for the City. The City denies your allegations that you have not received any information about status. The City has informed you on several occasions since receiving the June 5 request that it is processing your request. You have served the City with other, similar requests for records for earlier time periods, and the City has disclosed records to you in connection with those earlier requests. In particular, the City has produced copies of legal bills from Mr. Rizzo’s firm from November 2005 through February 2006.

With the City’s complaint response is an affidavit of Carmen Fernandez. She avers that each time you have contacted the Law Department, either Ms. Fernandez or Ms. Rodriguez have spoken with you regarding the status of your requests, including the June 5 request. The City is reviewing responsive documents and will provide you access as soon as those records are available. The City further asserts that the legal bills from March 2006 through June 5, 2006 are not yet available because the process of actually generating the bills to the City and redacting privileged information from them is quite time consuming. The City anticipates being able to deliver redacted March 2006 bills to you no later than the close of business on August 11, 2006. The bills for April and May 2006 will be processed and delivered thereafter.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A public record is any material that is created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). No provision in APRA sets out a time within which responsive records must be produced. The absence of a specific timeframe for producing records no doubt takes into consideration that it may involve significant time for the agency to locate responsive records, review them for privileged or confidential information and redact the records, or pull aged files from off-site storage, among other considerations.

The gist of your complaint is that the City has constructively denied you records by being unavailable to speak with you to inform you of the status of your request. The City counters

your allegations of unresponsiveness by stating that the City has informed you on numerous occasions that the records you requested are being compiled and reviewed. It is apparent that the City has produced similar records (legal bills) to you in the past, and has undertaken the responsibility of redacting the records, a process that can be time-consuming. As you know, my office has counseled public agencies to keep the requester informed at reasonable intervals so that the requester can be confident that the agency is working the request and is not unduly delaying the records.

Given the different versions presented by your complaint and the City's response, I cannot and do not find that the City has shirked its duty to produce records in a timely fashion. In particular with respect to legal bills, the City is under no obligation to produce any record that is not yet "created, received, retained, maintained, or filed by or with" the City, and this applies to legal bills not yet compiled by the law firm and submitted to the City.

The City has stated its intention to continue to keep you apprised of its progress in compiling your June 2006 records request, taking the step of documenting these future communications in writing.

CONCLUSION

For the foregoing reasons, I find that the City of East Chicago has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Christopher Rizzo