

June 1, 2007

Dave T. Saviola
8600 Maple Avenue
Gary, IN 46403

Re: Formal Complaint 07-FC-121; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Saviola:

This is in response to your formal complaint alleging that the City of Gary ("City") violated the Access to Public Records Act because the City has not provided the record in a reasonable time. I find that the City's production of the records was not reasonable.

BACKGROUND

On January 19, 2007 you submitted to the City a request for a listing (name, position, salary) of any employees hired in December, 2006 and January, 2007. On January 30, you requested disclosure of all names and positions in the City of Gary payroll for the month of January, 2007. You received a letter dated February 5 from the City law department, stating that the requests were to be somewhat delayed in anticipation of the April 15, 2007 tax filing deadline. As of the date of the filing of your complaint, May 2, 103 days have passed and you have not received the records. You also have not received any indication from the finance or law department when they intend to comply with the requests.

I sent a copy of your complaint to the City. City attorney Susan Severtson submitted a response, a copy of which is attached. She stated that the Access to Public Records Act does not require that the City generate lists that do not already exist through the ordinary course of business; however, the City had advised you it would provide you with the information. However, the City's response would be somewhat delayed due to three unavoidable factors.

First, the controller was new to the office when your request was received. Second, in January 2007, the small staff in the controller's office was preparing tax statements. Third, January saw a state board of accounts audit that was not anticipated until later in the year.

City business must take precedence over your requests, argues the City. The requests of you and others who are politically motivated individuals take valuable employee resources from their appointed City tasks. Ms. Severtson states that “clearly, this disruption of City business due to burdensome political motivated (sic) requests is also prohibited by the Act.” You admit that your requests are for political purposes, she points out. The City asks that I consider your motivation in my opinion. Finally, the City states that you have been contacted by telephone and told that 50 pages of records are ready for review. The City asks that you contact them for direction concerning how and when to review the records for which you are willing to pay the copy fee.

ANALYSIS

[G]overnment is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

Ind.Code 5-14-3-1.

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). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). 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).

There are no specific timeframes for when the public agency must provide the record. This office has stated on numerous occasions that the public agency should produce the record within a reasonable time. Given that providing persons with information is an essential function of government and an integral part of the routine duties of public officials, the motivation of the requester in seeking records must not influence the public agency’s consideration of the request. I decline the City’s invitation to find political motivation is an improper use of the Access to Public Records Act.

The City has some grounds upon which it may claim that the discharge of other important duties of the City will be compromised if it must compile voluminous records in response to yours and others’ requests. A public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). However, the foregoing does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. IC 5-14-3-7(c).

The City dwells on what it perceives as an improper motive on your part for your records requests, but nothing in the APRA limits the APRA with regard to the person's motivation for requesting records. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. IC 5-14-3-3(a). The City's explanation regarding the time for producing the records, in my opinion, does little to acknowledge the public policy of the APRA as set forth in Indiana Code 5-14-3-1. Assuming that the City called you to inform you that the records were available around May 25, the date of the City's complaint response, it took the City over four months to produce the records. The records consist of payroll information for recent payroll periods. It is my opinion that, while the City can regulate material interference with the other duties of the city controller's office, the time within which the City made the 50 pages of current payroll records available to you was not reasonable.

I recommend that with respect to future requests for records, the City should inform you when the records will likely be available rather than just to state that compilation will be delayed by other business. I also recommend that the City tell you its progress periodically. I suggest that the City provide some of the records before others that will take more time to compile. If the City does not have the precise record requested, and the City would have to create a record, the City should offer to produce already-created documents that approximate the information sought by the requester.

CONCLUSION

For the foregoing reasons, I find that the City of Gary did not produce its public records within a reasonable period of time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan M. Severtson