

July 23, 2007

Steve Charles
214 NW 16th Street
Washington, Indiana 47501

Re: Formal Complaint 07-FC-173; Alleged Violation of the Access to Public Records Act by the City of Washington

Dear Mr. Charles:

This is in response to your formal complaint alleging the City of Washington (“City”) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by failing to provide access to records you requested. A copy of the City’s response to your complaint is enclosed for your reference. I find that the City’s response may have been untimely under the statute but did not otherwise violate the APRA.

BACKGROUND

Your complaint, received by the Public Access Counselor’s Office on June 21, 2007, alleges that on May 11, 2007 by letter from your attorney, you requested access to the following records or information from the City of Washington:

1. Whether the City has a contract with anyone for the collection and sale of old newspapers
2. If there is such a contract, a copy of the contract
3. A copy of any ordinance, order, letter of instruction, memorandum of agreement or any other document authorizing the activities with regard to the recycling of old newspapers in the City
4. The name, address and phone number of the owner of the box trailer being used by the City to store old newspapers
5. Documentation showing the City has been paid for the newspapers

In response to your complaint, the City provided a copy of its response to your May 11 request. In the response, dated May 21, 2007, the City indicates the Mayor and City Attorney researched the issue about which you seek records. The City found no documentation relating to the recycling of old newspapers. As such, the City had no records responsive to your request.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

The City is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(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 delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

Your complaint alleges the City did not provide a response to your request for records. The City did respond on May 21 to your request. In its response, the City did not indicate the date of receipt of your request. The APRA requires response by the public agency within seven days of receipt of the request. IC 5-14-3-9(b). The City is not required to produce the records within seven days but only to respond to the request within seven days. Because I do not have information regarding the date the City received your request, I do not know whether the response was timely. The response from the City was dated ten days after your request was dated. If the City did not respond within seven days of receipt of the request, the response would have been untimely.

As to the production of responsive documents, the City indicates it does not find any records responsive to your request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. Because the City does not find any responsive documents, I find the City did not violate the APRA.

CONCLUSION

For the foregoing reasons, I find that while I do not know whether the City of Washington's response was timely under APRA, I find that the response does not otherwise violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Dave Abel, Mayor, City of Washington