

October 5, 2007

Charles Garnette
4802 Lafayette Espianade
Fort Wayne, IN 46806

Re: Formal Complaint 07-FC-265; Alleged Violation of the Access to Public Records Act by the city of Fort Wayne

Dear Mr. Garnette:

This is in response to your formal complaint alleging the City of Fort Wayne (“City”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to records. A copy of the City’s response to your complaint is enclosed. I find the City may have violated the APRA if it did not provide an initial response to your request within 24 hours of receipt of the request but did not otherwise violate the APRA.

BACKGROUND

In your complaint you allege that you requested on July 25 records concerning economic development funds granted to a particular individual. You received from the City a response dated August 6 indicating the City’s departments responded to the legal department’s inquiry and indicated they did not maintain any documents responsive to your request. The City indicated that if you could provide more information regarding the records you were seeking, the City would forward the request to the appropriate department. You filed your complaint with this office on September 5 alleging you had been denied access.

The City responded to your complaint by letter from Associate City Attorney Paul Keaton dated October 5. Mr. Keaton sent this letter after he and I spoke by telephone. Mr. Keaton indicated that upon receipt of your request, he forwarded the request to all departments which may enter any transactions you listed. Upon receiving information from those departments that they did not maintain any records responsive to your request, Mr. Keaton sent you a letter indicating such. He also called you to let you know he could not find any records responsive to your request but that if you could provide any additional information he would look further. You indicated that you were able to find a document in the Allen County Recorder’s office and instructed Mr. Keaton to cease his search. Mr. Keaton contends the document you provided was created pursuant to a transaction between the individual and the Community Development

Corporation of Fort Wayne, which is an Indiana not-for-profit corporation and not an instrument of the City.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with 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." I.C. §5-14-3-1.

The City is clearly a public agency for the purposes of the APRA. I.C. §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. I.C. §5-14-3-3(a).

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. I.C. §5-14-3-2.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered in person or orally and the agency does not respond to the request within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a).

Here the City received your request on July 25. At that point Mr. Keaton forwarded your request to several City departments to determine whether any responsive records exist. I am unclear whether Mr. Keaton responded to you within 24 hours to let you know he was seeking response from City departments or whether his August 6 letter was the first communication to you. If the August 6 letter was the first response to you, the City violated the time for a request delivered in person at the office outlined in I.C. §5-14-3-9(a). If Mr. Keaton let you know within 24 hours of receipt that he was forwarding your request to the departments, the City complied with I.C. §5-14-3-9(a) by responding to your request. The 24 hour requirement is for response from the agency but not necessarily production of the documents, so the City did not violate the APRA by taking time to search for the records.

Regarding the specific records you requested, the City has indicated it is not the public agency who maintains that information. This is evidenced by the fact you obtained a copy of the document you were seeking from a county agency over which the City has no authority. Further, the record you received and provided with this complaint is a contract between an individual and a not-for-profit corporation which is also not subject to the City's oversight or authority. While the APRA requires a public agency to provide access to records not excepted from disclosure (see I.C. §5-14-3-3), it does not require an agency to provide access to records it is not responsible for maintaining. I find the City has not violated the APRA by indicating it is not the public agency responsible for the documents you request.

CONCLUSION

For the foregoing reasons, I find that the City may have violated the APRA if it did not provide an initial response to your request within 24 hours of receipt of the request but did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Paul Keaton, City of Fort Wayne