

October 23, 2007

Raymond Curtis
PO Box 758
Beverly Shores, Indiana 46301

Re: Formal Complaint 07-FC-290; Alleged Violation of the Access to Public Records Act by the Indiana Department of Local Government Finance

Dear Mr. Curtis:

This is in response to your formal complaint alleging the Indiana Department of Local Government Finance (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to records. A copy of the Department’s response to your complaint is enclosed for your reference. It is my opinion the Department did not violate the APRA.

BACKGROUND

In your complaint you allege you submitted to the Department a request for access to records dated September 6, 2007. You allege the Department “constructively denied access” to those records in its September 14 letter to you and in a telephone answering machine message left at some time after that date. You filed your complaint with my office on September 24.

The Department responded to your complaint by letter dated October 10 from Brenda Summers. Ms. Summers contends that the Department responded to your request, received September 6, by letter dated September 10. In the September 10 letter, the Department indicated it was gathering the information requested and would produce the records by September 14 or indicate to you at that time that the Department does not maintain the records. The Department then sent you a letter dated September 14. The Department indicated it sent records you requested via United States Postal Service on September 14 and provided an invoice for the copy costs allowed by statute. The Department also notified you in the September 14 letter that the additional information you request was not maintained by the Department but directed you to the appropriate entity from which you could obtain the records. As a courtesy, the Department did obtain some records from the county office and provided those to you.

Regarding your assertion that Nexus is a contractor of the Department, the Department asserts it is in no way affiliated with Nexus. Regarding your request for a signed stipulation agreement, the Department has asked you for further information to assist in identifying the record to which you refer, but you have not provided any further information.

ANALYSIS

The public policy of the APRA states, "(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." Ind. Code §5-14-3-1. The Department 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 Department 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 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 by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A response could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

A request for inspection or copying must identify with reasonable particularity the record being requested. I.C. §5-14-3-3(a).

Here, you submitted your request to the Department on September 6. The Department responded on September 10, well within the seven days allowed by the APRA. I.C. §5-14-3-9(b). Your request contained a series of questions related to two key numbers at the Department. The APRA requires an agency to provide access for inspection and copying of records. I.C. §5-14-3. It does not, however, require an agency to respond to questions posed without reference to specific records. A request must specify with reasonable particularity the record being requested.. I.C. §5-14-3-3(a). Although your request contained a series of questions rather than a specific request for access to records, the Department made a good faith effort to provide you copies of responsive records. The Department was able to locate some records responsive to your request and mailed those to you on September 14, which I believe to be well within a reasonable time period.

Regarding your request for stipulation agreements, the Department has indicated it has no knowledge of this record. The Department sought more information from you that might help the Department locate the record, but you did not provide any further information. Because you

did not specify the record you sought in a manner particular enough to help the Department locate it, I cannot find any violation of the APRA.

Regarding your complaint that the Department denied you access to records maintained by other public agencies or by Nexus, nothing in the APRA requires a public agency to provide access to records for which it is not responsible to create or maintain. Here, the Department does not maintain the records you request. Contrary to your assertion, the Department is in no way affiliated with Nexus, and so it has no control over the records Nexus maintains. The Department cannot provide you copies of those records you requested that are outside of its maintenance and control.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Brenda Summers, Indiana Department of Local Government Finance