

November 28, 2007

Rickey Gibbs
509 South Cicott Street
Logansport, Indiana 46947

Re: Formal Complaint 07-FC-328; Alleged Violation of the Access to Public Records Act by the Mayor of Logansport

Dear Mr. Gibbs:

This advisory opinion is in response to your formal complaint alleging the Mayor of Logansport (“Mayor”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to provide all of the records you requested. A copy of the Mayor’s response to your complaint is enclosed. It is my opinion that while the Mayor’s response may have been untimely under the APRA, the Mayor has not otherwise violated the APRA.

BACKGROUND

In your complaint you allege that on October 22, 2007 you delivered to the Mayor a request for records and correspondence between the City of Logansport and the State of Indiana related to fire service at the Logansport State Hospital campus. You indicate that you gave the Mayor over 48 hours to gather the information requested. When you arrived to pick up the records, not all of the records you requested were provided to you. You submitted your complaint to my office on October 29.

The Mayor responded to your complaint by letter dated November 27. The Mayor indicates the City has been in discussions with the State to formalize an agreement to provide fire protection at Logansport State Hospital. The Mayor indicates he believes he forwarded your request to another individual, whom I presume to be an employee of another public agency, for response. The Mayor contends he has been advised that because the City’s negotiations are with a new “commercial customer,” the negotiations can be kept confidential. But the Mayor indicates he has not taken that position and has provided you with all communications regarding the issue, pursuant to your request. He further indicates no meetings have occurred, so no meeting minutes exist. The Mayor contends the City has provided you with all records responsive to your request.

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 or the Mayor's office 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 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). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a).

A response could be an acknowledgement that 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.

It is my understanding the Mayor received your request and initially forwarded it to someone else for response. A public agency is required to respond to any request for access to records it receives, even if the request is for records not maintained by the agency. I.C. §5-14-3-9. If the Mayor sent your request to another agency and did not respond to you directly within 24 hours of receipt of your request, that would be a violation of the APRA. Here, though, it is my understanding that while the Mayor may have sent the request to another public agency, the Mayor also provided records to you. The Mayor contends he provided to you all records responsive to your request maintained by the Mayor's office. The Mayor indicates you have not been provided with any meeting minutes because no meetings have taken place.

CONCLUSION

For the foregoing reasons, it is my opinion that while the Mayor's response may have been untimely under the APRA, the Mayor has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive style with a light blue highlight behind the text.

Heather Willis Neal
Public Access Counselor

cc: Michael Fincher, Mayor, City of Logansport