

March 12, 2007

Sent Via Facsimile

Tincey J. Wright
c/o Kurt Webber, P.C.
11805 N. Pennsylvania Street #104
Carmel, IN 46032

Re: Formal Complaint 07-FC-36; Alleged Violation of the Access to Public Records Act by the City of Richmond, Common Council, and Richmond Power & Light

Dear Mr. Webber:

This is in response to your formal complaint alleging that the City of Richmond, Common Council, and Richmond Power & Light [collectively, the “City”] violated the Access to Public Records Act (“APRA”) by failing to produce the requested records within a reasonable time because more than six weeks have passed and no records have been produced.

BACKGROUND

Tincey J. Wright filed a Notice of Tort Claim against the City of Richmond, et al. on or about December 19, 2006. With that notice, on behalf of Ms. Wright you requested certain records under the APRA. In particular, she requested to inspect and copy all public records in the original form concerning the ownership of the electronic transmission transformers, lines, and other equipment located on property commonly known as 2928 Wolfe Road, Richmond, Indiana; the construction, maintenance, repair, and replacement of such transformers, lines, and other equipment; the investigation of Mr. Wright’s death; and subsequent maintenance, repair, and replacement of such transformers, lines, and other equipment. The requests were received by the City on December 20 and 21, 2006.

On January 3, 2007, the City responded to your request that it would determine if there were any responsive documents. The responsive letter also states that the City telephoned you

on the same day, January 3. As of February 2, 2006, Ms. Tincey has not been afforded the opportunity to inspect and copy the records.

I sent a copy of your complaint to Mr. Walter Chidester, City Attorney. Mr. Chidester sent a letter in response to your complaint, a copy of which is attached. His March 6 letter recited that the documents were enclosed, except for a compact disc of the photographs of the accident site, which would be sent the following day. Because of a mix-up in communication on Mr. Chidester's part with Richmond Power & Light, the documents took longer to get than anticipated.

ANALYSIS

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 by mail or by facsimile, the public agency is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). A response could be a letter acknowledging receipt of the request, and some indication of how and when the agency intends to comply. The production of the records is not subject to any specific time within the APRA. Rather, the Office of Public Access Counselor has said that records should be produced within a reasonable period of time under the circumstances.

Some of the circumstances that this office would consider include aged records that are stored off-site, and requests that are by their nature broadly stated. The City has not articulated specific reasons why the records had not been produced more quickly other than to admit a mix-up in communication. The City admits it bears responsibility for not producing the records timely. I cannot contravene the City's admission since I am not privy to any other facts. Therefore, I must find that the City should have produced the records within a reasonable time. The City has now provided the records.

CONCLUSION

For the foregoing reasons, I find that the City of Richmond, Common Council, and Richmond Power & Light should have provided the records within a reasonable period of time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Walter S. Chidester