

March 16, 2007

Delmar Stout
3230 Maple Drive
Highland, IN 46322

Re: Formal Complaint 07-FC-39; Alleged Violation of the Access to Public Records Act by the City of Gary Civil Service Commission

Dear Mr. Stout:

This is in response to your formal complaint alleging that the City of Gary Civil Service Commission (“City” or “Commission”) violated the Access to Public Records Act by refusing to disclose minutes from the February 1st and 2nd public meetings. I find that the City is required to provide a response within 24 hours of the request but not necessarily provide the records in that timeframe. I further find that the City is required to provide the memoranda from public meetings in a reasonable time after its meeting under the Open Door Law, irrespective of whether the City’s Commission has approved the minutes.

BACKGROUND

You state in your formal complaint against the City that when you requested in person the meeting minutes from the February 1st and 2nd public meetings, the secretary told you that the minutes were not available and she did not know when the records would be available. After you told her that when a person makes a request in person, the records must be made available within 24 hours, she told you that she would contact the City attorney Mr. Charles Brooks. Mr. Brooks told you that the 24-hour requirement applied only once the minutes were approved at the next meeting. You then filed this formal complaint.

I sent a copy of the complaint to the City. Mr. Brooks supplied a response, a copy of which is enclosed. Mr. Brooks stated that at the time of your request, the Monday following the Thursday and Friday meetings, the tape used for recording the meetings had not been transcribed. He advised you that the minutes were not official until they were approved by the Commission. At no time did you request to listen to the tape recording, but had you done so, you

would have been permitted to listen to the tape and make notes from it. Mr. Brooks denied that the City had denied you a record. The secretary merely advised you that the minutes were not available at that time because a hard copy had not been transcribed or presented to the Commission for approval.

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). An audio recording maintained by the public agency is a public record. *See* IC 5-14-3-2(m). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). A response may be just an acknowledgement that the request has been received. The provisions setting forth the time within which an agency must respond do not require that the record be produced. If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c).

Under the Open Door Law, memoranda from a meeting are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s proceedings. IC 5-14-1.5-4(c).

The City did respond within 24 hours to your request, by telling you at the time that you submitted your request that the written minutes were not yet created. In addition, the City did not fail to provide the written memoranda within a reasonable time after the meeting, since you requested them only one or two business days after the meetings occurred. I agree with the City that you were entitled to listen to and manually transcribe the tape recording, but you did not request that type of access. However, I note that the City was also required to provide a copy of the tape recording if the City had reasonable access to a machine capable of reproducing the recording; but again, you did not ask for a copy of the tape. *See* IC 5-14-3-8(e).

The City was not entitled to deny the minutes until such time as the Commission met to approve the minutes, however. The City admits it told you that it could not furnish the minutes until they had been transcribed and submitted to the Commission for approval. Although you may have not succeeded in receiving the transcribed minutes within 24 hours of your request, the oral denial of your request until the minutes were approved by the Commission was in violation of the Access to Public Records Act, in my opinion. If the City has now transcribed the tape recording, it should provide the minutes to you, marking the minutes “draft” or otherwise indicating that they are subject to approval.

CONCLUSION

For the foregoing reasons, I find that the City is required to provide a response within 24 hours of the request but not necessarily produce the records in that timeframe. I further find that the City is required to provide the memoranda from public meetings in a reasonable time after its meeting under the Open Door Law, irrespective of whether the City’s Commission has approved the minutes.

Sincerely,

Karen Davis
Public Access Counselor

cc: Charles D. Brooks, Jr.