

March 31, 2008

Jonathan Petersen
608 165th Street, Suite 201
Hammond, Indiana 46324

Re: Formal Complaint 08-FC-79; Alleged Violation of the Access to Public Records Act by the City of East Chicago Building Department

Dear Mr. Petersen:

This advisory opinion is in response to your formal complaint alleging the City of East Chicago Building Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your client access to records. It is my opinion the Department has violated the APRA by denying access to records absent any statutory authority to do so.

BACKGROUND

You submitted a request for access to records maintained by Department by letter delivered in person and dated February 26, 2008. You requested the list of registered landlords in the City of East Chicago. The Department responded to the request by letter dated February 29. The Department denied your request based on a provision in City Ordinance No. 0-01-0017 declaring the records confidential. You mailed this complaint March 4, and I received it March 7, alleging denial of access.

My office sent a copy of the complaint to the Department, pursuant to I.C. § 5-14-5-8, and invited the Department to respond to the complaint. To date I have not received a response to the complaint.

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." I.C. § 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 in person and the agency does not respond to the request within 24 business hours, the request is deemed denied. I.C. § 5-14-3-9(b). Here, if you delivered the request on February 26 and the Department did not respond to the request until February 29, the Department violated the APRA by not responding within 24 business hours.

Regarding the substance of the request, the Department denied access to the landlord list, claiming the records were declared confidential pursuant to City Ordinance No. 0-01-0017. While section 4 of the APRA contains several mandatory and discretionary exceptions to disclosure, it does not allow a city to pass an ordinance restricting access to records where the authority to restrict access has not specifically been granted. A mandatory exception to disclosure exists for records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to a public agency by statute.” I.C. § 5-14-3-4(a)(2). Here, the City did not respond to the complaint, so we do not have the benefit of the City’s assertion that the ordinance was passed under some statutory authority. My search produces no statutory authority allowing the City to declare these records confidential. As such, it is my opinion the records must be disclosed upon request.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Earnest Hagler, City of East Chicago Building Department