



STATE OF INDIANA

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December 9, 2010

Mr. Joseph Shabazz
646 Diamond
South Bend, IN 46628

Re: Formal Complaint 10-FC-281; Alleged Violation of the Access to Public Records Act by the City of South Bend

Dear Mr. Shabazz:

This advisory opinion is in response to your formal complaint alleging the City of South Bend ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the City's response is enclosed for your reference.

BACKGROUND

According to your complaint, on October 21, 2010, you submitted a public records request to the City. You claim that the City is required to maintain the records you requested under its municipal code, but that you received an incomplete response.

My office forwarded a copy of your complaint to the City. In response, Assistant City Attorney Thomas Bodnar states that the City responded to your request via letters on October 22nd, October 28th, and November 1st, but each of those communications were returned to the City as undeliverable. This occurred in spite of the fact that Mary Arndt, the office manager for the City's legal department, contacted you via telephone and confirmed with you that the address the City had for you was correct. On November 12th, you appeared at the City's legal department and met with Ms. Arndt, who showed you the returned letters and demonstrated the City's attempts to comply with your request. Mr. Bodnar states that you have now received all responsive records, and that the City is not required to create any new records to satisfy your request.

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 City does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the City's public records 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).

Under the APRA, 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 (7) 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 from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Here, the City responded to your request in a timely manner, but the response did not reach you because of the problem with your mailing address. In my opinion, the City satisfied the statute by responding to you at the address you provided to it. Moreover, after the City's first response was returned, the City contacted you to confirm your address and attempted to mail you a response again. In the future, if you have a pending records request with an agency and your address changes, I encourage you to inform the agency of the change to avoid this problem. In any event, I trust the City's production of all responsive records resolves your complaint. The City is correct that it need not create new records in response to your request. The APRA does not require a public agency to create a new record in order to satisfy a public records request. *Op. of the Public Access Counselor 10-FC-56.*

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Thomas L. Bodnar