



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

March 25, 2011

Mr. Marcus D. Harden  
Via Electronic Mail: mharden@indstate.edu

*Re: Formal Complaint 11-FC-74; Alleged Violation of the Access to Public Records Act by the Gary Public Transportation Corporation*

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the Gary Public Transportation Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Corporation, but we have not yet received a response. I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that you hand-delivered a written request to the Corporation on March 3, 2011. “[A]s of March 17, 2011, [you] were told that the corporation did not have a response to [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 Corporation does not contest that it is 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 Corporation’s public records during regular business hours unless the 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 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. Thus, if the Corporation failed to respond to your hand-delivered request within 24 hours of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the Corporation's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Corporation, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Corporation has not provided a justification for withholding the records at issue here, it is my opinion that the Corporation has failed to sustain its burden.

If the Corporation cannot justify withholding the records under the APRA, the Corporation should release the records to you as soon as possible. To the extent the Corporation continues to deny you access to the requested records following the issuance of an advisory opinion from this office and you believe the Corporation is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Corporation violated the APRA if it failed to respond to your March 2, 2011, records request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Daryl E. Lampkins