



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 8, 2013

Mr. Ruben Mendez  
3641 Minnesota Street  
Lake Station, Indiana 46405

*Re: Formal Complaint 12-FC-360; Alleged Violation of the Access to Public Records Act by the City of Lake Station*

Dear Mr. Mendez:

This advisory opinion is in response to your formal complaint alleging the City of Lake Station ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Brenda Samuels, Clerk-Treasurer, responded on behalf of the City. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted written requests for records to the City on September 4, 2012 and September 14, 2012. As of December 14, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records in response to your request.

In response to your formal complaint, Ms. Samuels advised that upon receipt of your formal complaint the City searched its files to determine how it responded to your original request. It has been determined that at least one of your requests was attached to several others that you had submitted. Your request was not addressed; as such there is no response. Upon being made aware of your request, the City has provided that in response to your request that was submitted on September 4, 2012 for "a detailed copy of all records of payroll records in all of 2008 to include vacation/sick days, pat, etc there are no records maintained by the City that are responsive to your request", that it does not maintain any records that are responsive to your request. The City further provided that it did not maintain a personal time record for you in 2008 as the Superintendent is not required to punch a clock. In response to your request for "record of all accident, injury, if placed on light duty which occurred in the City of Lake Station to any employee, striking the name, ssn., and other personal info of employees of the City of Lake Station since this is privilege and personal info, I just wanted the 1<sup>st</sup> incident reports (since October 2010)", the City has informed you that the records are available for inspection and copying at the Clerk-Treasurer's Office.

## ANALYSIS

The public policy of the APRA states that “(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.” *See* I.C. § 5-14-3-1. The City is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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 (emphasis added). *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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 acted contrary to section 9(b) of the APRA by failing to respond in writing within seven days of the receipt of your written request.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, City provided that it did not maintain any records responsive to your request for “a detailed copy of all records of payroll records in all of 2008 to include vacation/sick days, pat, etc.” The City further provided that it did not maintain a personal time record for you in 2008 as the Superintendent is not required to punch a clock. As such, it is my opinion that the City did not violate the APRA by failing to maintain a record in response to your request that it was not otherwise legally obligated to retain.

Just as a reminder to all parties for any subsequent requests that are submitted, the APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, except for:



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- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. Lastly, all personnel file information shall be made available to the affected employee or the employee's representative. *Id.*

## CONCLUSION

For the foregoing reasons, it is my opinion that the City acted contrary to section 9 of the APRA in failing to respond to your written request within seven (7) days of receipt. As to all other issues, it is my opinion that the City did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Brenda Samuels