



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

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](http://www.IN.gov/pac)

December 31, 2013

Mr. Curtis L. Westbrook  
1208 S. Madison St.  
Muncie, IN 47302

*Re: Formal Complaint 13-FC-338; Alleged Violation of the Access to Public Records Act by the City of Muncie*

Dear Mr. Westbrook,

This advisory opinion is in response to your formal complaint alleging the City of Muncie ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The City responded to your complaint via Mr. John Quirk, Esq., City Attorney. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 11, 2013.

## BACKGROUND

Your complaint alleges the City of Muncie violated the Access to Public Records Act by denying producing records responsive to your request.

On September 26, 2013, you served upon the City a request for the following information:

Public information pertaining to the 2013 year-to-date payments, payouts or contracted payments made by the City of Muncie for the Unity Center construction and all Project-to-Date funding appropriated to and for the Unity Center Project and the list of Contractors participating in its construction and/or renovation.

It appears as if a majority of this information was compiled and printed on September 27, 2013 for your inspection. According to the City, you participated in a meeting with the City's Director of Community Development on that same day and received the information. As for a list of contractors participating in its construction, the City asserts you were informed during the meeting the City does not pay the sub-contractors directly (and therefore does not have the list you seek), but rather the recipient of the funds, the Muncie Housing Authority, maintains that particular information.

Approximately November 18, 2013, you were informed additional information regarding the construction project could be found on the City's website for your inspection; however, you argue you were not able to access the information.

### **ANALYSIS**

The public policy of the APRA states that "a (p) roviding person 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 Ind. Code § 5-14-3-1. The City of Muncie is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

From the information provided, you made only one request to the City on September 26, 2013. If you were unsatisfied with the information provided to you during the September 27, 2013 meeting with the Director of Community Development, then the denial would have occurred on that date. Because your formal complaint received December 11, 2013 is well beyond the statutory 30 deadline for filing a request for an Advisory Opinion, your complaint is untimely. See Ind. Code § 5-14-5-7.

It is unclear why the City mailed you a letter on or about November 18, 2013, however, it appears that your September 27, 2013 request was satisfied. The City has provided a mechanism for requesting additional information. If you are not able to access online information, I would encourage the City to work with you to help locate and retrieve records responsive to any future requests.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Muncie did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. John Quirk, Esq.