



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 11, 2013

Mr. Jonathan M. Mraunac
222 N. LaSalle Street, Suite 1400
Chicago, Illinois 60601

Re: Formal Complaint 13-FC-46; Alleged Violation of the Access to Public Records Act by the Gary Fire Department

Dear Mr. Mraunac:

This advisory opinion is in response to your formal complaint alleging the Gary Fire Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Department on February 12, 2013. The Department's response was due no later than March 7, 2013. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint you provide that on November 30, 2012, you submitted a written request for records to the Department via certified U.S. Mail. The Department received the written request on December 3, 2012. Contemporaneous with your written request, on December 3, 2012 you made an oral request of the Department via Ms. Lizette Lewis. On January 29, 2013 you faxed the Department an inquiry regarding the status of your request. As of February 12, 2013, 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.

After filing your formal complaint you notified our office that you did receive a two-page report from the Department on February 22, 2013. However, you provide that in a previous conversation with the Department, a representative of your firm was informed that the Department had in its possession two reports that were responsive to your request. Thus, you now believe that the Department's response to your request was non-compliant as all records that were responsive to your request were not provided.

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 Department 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 Department’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 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* I.C. § 5-14-3-9(b). 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. Your original request for records was received by the Department via certified U.S. Mail on December 3, 2012. The Department was thus required to respond in writing by December 10, 2012, and at a minimum, acknowledge the receipt of the request. As the Department failed to respond in writing to your written request within seven (7) days of receipt, it is my opinion that the Department violated section 9(b) of the APRA.

After filing your formal complaint, you provide that you received a single report from the Department in response to your request; however you maintain that the Department has denied your request to a second report that would also be responsive to the request that was submitted. Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Without the benefit of a response from the Department to your formal complaint, it is unclear why you were denied access to the second report. As such, it is my opinion that the Department violated section 9(c) of the APRA by failing to cite to the applicable exemption that would allow it to deny your request for a copy of the second report that was responsive to your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department violated section 9(b) of the APRA by failing to acknowledge in writing the receipt of your written request within seven (7) days of receipt. Further, it is my opinion that the Department violated section 9(c) of the APRA by denying your request for a copy of the second report without citing to the applicable exception within the law that would allow the agency to withhold the record.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Gary Fire Department