



# STATE OF INDIANA

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December 27, 2016

Mr. Norman D. Merritt  
2923 Conant Drive  
Mishawaka, Indiana 46544

*Re: Formal Complaint 16-FC-287; Alleged Violation of the Access to Public Records Act by City of Mishawaka*

Dear Mr. Merritt:

This advisory opinion is in response to your formal complaint alleging the City of Mishawaka ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Honorable David A. Wood, Mayor of Mishawaka has responded to your complaint. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 4, 2016.

## **BACKGROUND**

Your complaint dated November 4, 2016, alleges the City has violated the APRA by not replying to your records request in a reasonable timeframe. You then amended your complaint received in our office on November 4, 2016, with the response from the City and alleging the response did not satisfy your request. Your record request dated October 29, 2016, requested access to all reports of potassium permanganate usage to-date, and the vendor from which it was procured.

The City responded to your request dated November 3, 2016 stating they have examined their records and find the Water Department has not used or purchased any potassium permanganate. The search went back to 2000.

The City has responded stating the letter you sent via certified mail was not allowed to be signed for by anyone other than the Mayor. The postal worker informed the Mayor's assistant that the letter would not be delivered again and the Mayor would need to go to the postal branch and sign for it, which he considers unreasonable. You were asked by the office staff to send the copy regular mail, but you refused to do so. In addition, the City states you sent a different request to the office regular mail, which was given to the City Attorney leading to the letter dated November 3, 2016, which was acknowledged.

## 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 Indiana Code § 5-14-3-1*. The City of Mishawaka is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the City’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Pursuant to Indiana Code § 5-14-3-3, a public agency can prescribe in what form a public records request is accepted –as long as it is not unduly burdensome. If the City instructed you to send the request via regular mail, it may do so. Additionally, your request was fulfilled on November 3, 2016. You did not identify in your request a particular document. Nevertheless, the City searched sixteen (16) years of records pursuant to a broad request for information. It did not find any records responsive to your request and has thereby satisfied its burden to search for records.

## CONCLUSION

Based on the aforementioned, it is the Opinion of the Public Access Counselor the City of Mishawaka did not violate the Access to Public Records Act.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mayor David A. Wood