

March 28, 2001

Mr. Michael E. Halpin  
Law Offices of Michael E. Halpin  
P.O. Box 2614  
Gary, Indiana 46403-0614

Re: *Advisory Opinion 01-FC-18*; Alleged Denial of Access to Public Records by the City of Hammond  
Department of Planning and Development.

Dear Mr. Halpin:

This is in response to your formal complaint, which was received on March 15, 2001. You have alleged that the City of Hammond Department of Planning and Development ("Department") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you requested photocopies of relocation records for a particular person in a written request dated February 23, 2001 and you did not receive any response from the Department. Ms. Joan M. Parrish Holmes, Relocation Manager for the Department, responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Department did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b). This failure to respond in a timely manner did constitute a denial that is actionable under the APRA.

### BACKGROUND

According to your complaint, in a letter dated February 23, 2001, you requested a photocopy of "all relocation records" for your client and provided his current and former addresses. You did not specify how your written request was delivered, but it appears that it was sent via U.S. Mail to the Department. As of the date you filed your complaint, you had not received any response from the Department.

In response to your complaint, Ms. Parrish Holmes provided me with a photocopy of her response to you dated March 8, 2001.<sup>1</sup> In that response, she apologized for the delay in her response and provided you with the information you requested and photocopies of regulations governing relocation.

### ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you mailed your request on or about February 23, 2001. The Department should have responded within seven (7) days after the request was received. It appears that you did not receive a timely response, as described in the preceding paragraph, within seven (7) days after your request was received by the Department. It is my opinion, therefore, that the failure of the Department to respond within the time frame contemplated under Indiana Code section 5-14-3-9 constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

## CONCLUSION

It is my opinion that the City of Hammond Department of Planning and Development did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b). This failure to respond was a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Joan M. Parrish Holmes  
Hammond DPD

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<sup>1</sup> While this letter was dated March 8th, it is unclear when you might have received it. In any event, March 8th would have been well past the seven (7) day period contemplated under the APRA.