

May 1, 2001

Mr. Anthony Copeland
Citizens in Action
2006 E. 140th Street
East Chicago, IN 46312

Re: Advisory Opinion 01-FC-24; Alleged Denial of Access to Public Records by the City of East Chicago.

Dear Mr. Copeland:

This is in response to two formal complaints, which were received on April 10 and April 16, 2001, respectively. You have alleged that the City of East Chicago ("City") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, on March 22, 2001, your organization requested copies of the lists of every deposit and expenditure in chronological order for the years 1999 and 2000. You allege that you were denied access to this information. Mr. Justin Murphy, Attorney for the City, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that an organization may file a formal complaint with this Office under Indiana Code chapter 5-14-5. It is also my opinion that it appears that the City did provide a response to the two public records requests within twenty-four (24) hours after they were received. Consequently, there were no denials under the APRA merely because the City did not produce the records in questions within the twenty-four (24) hours after receipt of the requests.

BACKGROUND

According to your complaint, Mr. Henry Rodriguez, a member of your organization, hand-delivered two written requests to the City on March 22, 2001 for copies of the lists of deposits and expenditures for the years 1999 and 2000. In addition, it appears that Mr. Rodriguez completed the City's request form requesting the same information. You filed your formal complaints on April 10 and April 16, 2001 alleging that your organization was denied access to these public records.

In response to your complaint, Mr. Murphy first states that he does not believe that you have standing to file a complaint since you did not file the records request and that you are not an attorney. Mr. Murphy further addresses your complaint by stating that the City did receive the requests in question on or about March 22, 2001. According to Mr. Murphy, the City has complied with the letter of the APRA with respect to Mr. Rodriguez' requests. Mr. Rodriguez was specifically consulted about his requests because

the City considered them to be somewhat ambiguous. Mr. Rodriguez was apparently advised that the City did not maintain the documents sought in chronological order as requested but that the information is listed on the check/warrant register, which Mr. Rodriguez had requested a copy of ten (10) days prior to the subject requests. The check/warrant register had not been produced to Mr. Rodriguez as of the filing of the requests that are the subject of this Opinion. On at least two (2) occasions after submitting the request, Mr. Rodriguez met with City Controller's Office employees to check the status of the production of these records. On both occasions, apparently Mr. Rodriguez was advised that the City was in the process of complying with his request and that the copies would be made available to him in the near future. Mr. Rodriguez, in fact, received over 700 pages of information concerning the deposits and expenditures on April 16, 2001.

ANALYSIS

Standing to File A Formal Complaint

The threshold issue raised by Mr. Murphy's response to your formal complaint is whether you in fact have standing to file a formal complaint in this matter since you did not personally submit the request for access to public records, Mr. Henry Rodriguez did. Under Indiana Code section 5-14-5-6(a)(1), "a person or public agency denied . . . the right to inspect or copy records under Indiana Code 5-14-3 . . . may file a formal complaint with the counselor." Person is defined as follows:

As used in this chapter [Ind. Code 5-14-5], "person" means an individual, a business, a corporation, an association, or an organization. The term does not include a public agency.

Indiana Code §5-14-5-2.

According to the documents provided to me, Mr. Rodriguez did complete a form that clearly states it is on behalf of Citizens in Action. >From my past experience with you, I know that you are personally very active in Citizens in Action and the organization is clearly a person under this statute. When you filed your formal complaint, you also made it clear that you were doing so on behalf of Citizens in Action. It is my opinion, therefore, that anyone who is legitimately affiliated with the organization may file a formal complaint so long as it is clear that there is a relationship between the request to the public agency and the formal complaint.

Alleged Denial of Access to Public Records by the City

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 City 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 City 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 twenty-four (24) business hours elapse after the agency receives a hand-delivered request and there has been no response. Ind. Code §5-14-3-9 (a). 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, Mr. Rodriguez hand-delivered the two requests for copies of the lists of City's deposits and expenditures for the years 1999 and 2000. You did not provide any specific information with your complaint, but claim that the request was denied.

Mr. Murphy, in his response to your complaint, states that Mr. Rodriguez was advised by the City that the documents would be produced to him. According to his letter, Mr. Murphy claims that the City did respond to Mr. Rodriguez' requests within the twenty-four (24) hours of receiving these requests as required under Indiana Code section 5-14-3-9(a). Mr. Murphy also stated that on at least two (2) occasions following the request, Mr. Rodriguez met with City Controller's Office staff to follow-up on his request and was told they were still in the process of compiling the records in response to his March 12th and 22nd requests .

Under the APRA, it is my opinion that it appears that the City did respond to the March 22nd requests submitted by your organization within twenty-four (24) business hours after they were received. There was no denial under the APRA so long as the City communicated with Mr. Rodriguez that he would get the requested records. Ultimately, Mr. Rodriguez was provided over 700 copies in response to his requests. The fact that the copies were not produced within the twenty-four (24) hours after the requests were received did not constitute denials under the APRA.

CONCLUSION

It is my opinion that a person for the purposes of filing a formal complaint under Indiana Code chapter 5-14-5 includes an organization such as Citizens in Action. It is also my opinion that it appears that the City of East Chicago did respond to your organization's requests within twenty-four (24) business hours of receipt as is required under Indiana Code section 5-14-3-9(a), and therefore, there was no denial of access under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Justin Murphy, Attorney
City of East Chicago

The two formal complaints concern requests that were made on the same date for copies of a list of every deposit and every expenditure in chronological order for the years 1999 and 2000. Since the two complaints were so similar, they have been combined for the purposes of the issuance of an advisory opinion from this Office.

While he did not expressly state so, it appears that Mr. Murphy is stating that the City did respond within the statutory time period, twenty-four (24) hours after the receipt of Mr. Rodriguez' requests.

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May 2, 2001