

March 19, 2002

Ms. Rosalie E. Staton  
c/o Mr. Kurt A. Webber, P.C.  
104 Granby Drive, Suite G  
Indianapolis, IN 46229

*Re: Advisory Opinion 02-FC-8; Alleged Denial of Access to Public Records by the City of Noblesville.*

Dear Ms. Staton:

This is in response to your formal complaint, which was received on February 27, 2002. You have alleged that the City of Noblesville, ("City,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a written request for various documents in a letter dated January 25, 2002 and that you never received a response from the City<sup>1</sup>. Mr. Michael A. Howard, 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 the failure of the City to respond to your January 25th request within seven (7) days after it was received constituted a denial of access that is actionable in court under Indiana Code section 5-14-3-9(b).

## BACKGROUND

According to your complaint, on January 25, 2002, a letter was sent on your behalf<sup>2</sup> to various public officials in the City, including the mayor, clerk-treasurer, common council and city engineer. Specifically, you requested an opportunity to inspect and copy various public records related to the possible condemnation of your property by the City. As of the date you filed your complaint, you had received no response from the City.

In response to your complaint, Mr. Howard stated that your request was not stated with enough specificity. He has now provided a response to your request which is dated March 11, 2002<sup>3</sup>.

## 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." 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).

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," but the Florida courts have held that a public agency has the affirmative duty to notify the requestor if more information is needed in order to respond to the request. *Salvador v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct., December 17, 1991.) Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. See generally, Ind. Code § 5-14-3-1.

It is also 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. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response.<sup>4</sup> 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 the facts as presented, it appears that the City received your request, but did not act upon it within the time frame set forth at Indiana Code section 5-14-3-9(b). Mr. Howard stated in his response that the reason for the delay in response to your request is that you did not provide enough specific information for the City to locate some or all of the public records you requested. The March 11th response Mr. Howard provided to you, however, does not with respect to any of the seven (7) separate requests you made indicate that the City did not understand the request or needed further information in order to respond to you. It is my opinion, therefore, that the City's failure to respond to your January 25th request within seven (7) days of receiving it did constitute a denial that is actionable in court under the APRA.

## CONCLUSION

It is my opinion that the City of Noblesville denied you access to public records under Indiana Code section 5-14-3-9(b) when they failed to respond to your January 25, 2002 request for access to public records and that this denial is actionable in court under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Michael A. Howard w/o enclosure

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<sup>1</sup> Under Indiana Code section 5-14-5-7(a), this advisory opinion may only address the alleged denial of access with respect to your January 25th request since more than thirty (30) days had passed since the alleged denial of access to your earlier public records requests.

<sup>2</sup> Your attorney, Mr. Webber, sent your request to the City.

<sup>3</sup> You filed your complaint on February 27, 2002.

<sup>4</sup> You did not specify in your complaint how your January 25th request was delivered, but given the date you indicated as the date of denial, it appears that the request was sent via the U.S. Mail.