

July 18, 2002

Mr. Sherman Van Dyke, Sr.
3516 North Rural Street
Indianapolis, IN 46218

Re: Advisory Opinion 02-FC-27; Allegations of Violations of the Access to Public Records Act by the City of Indianapolis Department of Public Works.

Dear Mr. Van Dyke:

This is in response to your formal complaint, which was received on July 8, 2002. You have alleged that the City of Indianapolis Department of Public Works ("DPW") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records request dated June 25, 2002. Ms. Barbara Lawrence, Director of the Department of Public Works, responded in writing to your complaint in a letter dated July 10, 2002. A copy of her response is enclosed for your reference. It is my opinion that the Department of Public Works denied access to public records under the APRA when it failed to respond to your public records requests within seven (7) days of the receipt of the request as required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint on June 25, 2002 you sent by facsimile a letter to Ms. Lawrence. In that letter, you requested the following records:

1. One copy of the DPW case number assigned to the written complaint on vegetation and woody growth located at 3515 N. Temple Ave. which was sent to the DPW on June 4, 2002.
2. One copy of the page showing the complaint entry in the complaint log book.
3. One copy of the DPW's authorized employee visual on-site written inspection report on the violation.
4. One copy of the DPW's written notice of the violation to the owner of 3515 N. Temple Ave.

In response to your complaint Ms. Lawrence stated that the July 1, 2002 letter sent to you was an update to earlier correspondence and was not a denial. Ms. Lawrence did state in her letter that she mailed copies of the records you requested on July 10, 2002.

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. The DPW 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 DPW 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).

Under the APRA, "if a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request." Ind. Code §5-14-3-9(b). It is the responsibility of the public agency to respond to requests for public records within this time period.

It is clear that the DPW was required to respond to your written request within seven (7) days after its receipt and that this was not done. Your letter was faxed to the DPW on June 25th. Therefore, the DPW was obligated to respond to your request on or before July 2, 2002. Ms. Lawrence did send a letter to you dated July 1, 2002, however, that letter does not address your request for public records. In a telephone conversation with Ms. Debbie Sherwood, Ms. Lawrence's assistant, she advised me that the DPW did not respond to each individual request that you made, which is required under the APRA. Since I have been provided no evidence to show that the DPW responded to your June 25th public records request, it is my opinion that the DPW failed to respond to your request of June 25, 2002 within seven (7) days after receipt, which constituted a denial that is actionable under Indiana Code section 5-14-3-9. It should be noted however that according to Ms. Lawrence, the documents that you requested have been provided to you.

CONCLUSION

It is my opinion that the DPW failed to respond within the time period required under Indiana Code section 5-14-3-9(b) to your June 25, 2002 public records request, and that failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Ms. Barbara Lawrence, Director
Department of Public Works