

October 17, 2002

Mr. Willie H. Hollingsworth  
402 Johnson Street  
Gary, IN 46402

Re: *Advisory Opinion 02-FC-50*;  
Alleged Denial of Access to Public Records by the Gary Housing Authority.

Dear Mr. Hollingsworth:

This is in response to your formal complaint, which was received on September 24, 2002. You have alleged that the Gary Housing Authority ("Authority") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Authority has denied you access to copies of specific public records. Mr. Marc Laterzo, an attorney representing the Authority, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Authority did deny you access to the draft meeting minutes you requested in violation of the APRA. With respect to the other public records you requested, however, the Authority was not required to produce documents that did not exist or were not in their possession at the time of your requests.

### BACKGROUND

According to your complaint, you made requests in August and September of this year to the Authority for copies of the various public records. In particular, you believe that the Authority has not responded with respect to your requests for the following public records:

1. The exception from U.S. Housing and Urban Development (HUD) granting Ms. Jani Gant the right to become interim Executive Director of the Authority;
2. Mr. Willie Harris' legal opinion expressing the right of the Interim Executive Director to request your resignation;
3. Casterline & Associates Audit Report;
4. Scope of Services for the Audit Report;
5. Copy of meeting minutes approving Joseph Shuldiner's consulting contract; and
6. Copy of meeting minutes approving Casterline & Associates' auditing contract.

Your last correspondence to the Authority concerned a meeting that had been scheduled for you with

Ms. Gant on September 18, 2002. In that letter, Ms. Gant stated that "all the documents available have been submitted to you for review." You advised Ms. Gant in a letter dated September 17th that you could not meet until you had received these documents. You also then filed your formal complaint with this Office.

In his response, Mr. Laterzo stated that the Authority has complied with the APRA with respect to your requests. The Authority has apparently provided you with copies of all the public records that are in its possession and responsive to your request. In support of this, Mr. Laterzo provided copies of his correspondence to you in response to your various requests. In letters dated August 16, 23 and September 19th, Mr. Laterzo responded to your requests, and in some instances provided you with copies of requested records. He also referred in his August 23rd letter to draft meeting minutes that would be provided to you after the Authority's board approved them. While not clearly stated, it appears that the Authority was advising you in these responses that, with respect to public records not addressed or provided in response to your requests, the Authority did not have any such records to produce.

### 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 Authority is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Authority 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 my opinion that the APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA, however, does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records responsive to the request, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. It is my opinion that when a requestor has asked for access to a number of public records, the public agency should respond specifically to each item requested so as to ensure that the requestor understands the reason that a public record was not produced in response to the request.

In the following paragraphs, I have addressed each of the six (6) public records you requested from the Authority and my analysis of the Authority's response to you:

*Copy of HUD letter concerning Ms. Gant*

It appears from the information provided to me that the Authority does not have the letter from HUD you requested. Although this may not have been communicated to you clearly in the responses you received from Mr. Laterzo and Ms. Gant, it is not a denial in violation of the APRA for a public agency not to produce a record that does not exist. For this reason, it is my opinion that the Authority did not violate the APRA with respect to your request for this record.

#### *Copy of Legal Opinion from Mr. Harris*

It appears from the information provided to me that the Authority does not have the legal opinion you requested. Although this may not have been communicated to you clearly in the responses you received from Mr. Laterzo and Ms. Gant, it is not a denial in violation of the APRA for a public agency not to produce a record that does not exist. For this reason, it is my opinion that the Authority did not violate the APRA with respect to your request for this record.

#### *Casterline & Associates Audit Report & Scope of the Audit*

According to Mr. Laterzo's August 23rd letter, at that time the Audit had not yet been prepared so the Authority could not provide it to you. However, in response to your September 17th request, Mr. Laterzo did provide you with a copy of the audit, which indicates that this document had been received by the Authority. For this reason, it appears that the Authority did not deny you access to this record in violation of the APRA.

#### *Meeting Minutes*

It is my opinion that draft meeting minutes of a governing body are disclosable public records. See PAC Opinion 99-2. The Authority has now provided you with copies of the approved minutes, but it is my opinion that the Authority improperly denied you access to the draft meeting minutes at the time you originally requested them. It is clear from Mr. Laterzo's August 23rd response that such draft minutes did exist when you made your earlier requests. For this reason, it is my opinion that the initial denial of access to copies of the draft meeting minutes you requested did violate the APRA.

It appears that as of the writing of this Opinion, the Authority has now produced the public records in its possession that are responsive to your requests. It is my recommendation that the Authority, and other public agencies, ensure that responses to requests for multiple public records are clearly stated. If this had been done in this case, you may not have been compelled to file a formal complaint with this Office.

### CONCLUSION

It is my opinion that the Gary Housing Authority improperly denied you access to copies of draft meeting minutes in violation of the APRA. As to the other documents you requested, however, the Authority did not deny you access if the records did not exist or if the records were not in their possession at the time of your requests.

Sincerely,

Anne Mullin O'Connor

Enclosure cc: : Mr. Willie Harris, Attorney w/o enclosures

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