

June 16, 2003

Larriante J. Sumbry
#965137 A-257
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-43*: Alleged Denial of Access to Public Records by the City of Gary Mayor's Office.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on June 5, 2003. You have alleged that the City of Gary Mayor's Office ("Mayor's Office") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Mayor's Office, which was dated May 19th , but that you did not receive a response to your request. Ms. Luci Horton, City Attorney, 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 Mayor's Office failed to respond to your written request within seven (7) days after it was received and that this was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you mailed a written request for access to public records to the Mayor's Office, which was dated May 19, 2003. When you had not received a response to your request, you filed your formal complaint with this Office.

In response to your complaint, Ms. Horton stated that your request was in fact received by the Mayor's Office on May 20, 2003. Your request, however, was not forwarded to the City Law Department through mistake and inadvertance. Ms. Horton also advised this Office that the City has now responded to your request and produced the public records they have that are responsive to your request.

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 Mayor's Office 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 Mayor's Office 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. 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. 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 the county 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 to the Mayor's Office and you did not receive a response to your request within seven (7) days after the Mayor's Office received it. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, it is important to note that City has now responded to your request and produced the records they maintained that are responsive to your request.

CONCLUSION

It is my opinion that the Mayor's Office failed to respond to your written request for access to public records within seven (7) days after it was received and that this was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Luci Horton, Gary Law Dept.