

May 21, 2008

Raymond Curtis
PO Box 758
Beverly Shores, Indiana 46301

Re: Formal Complaint 08-FC-113; Alleged Violation of the Access to Public Records Act by the Gary Board of Public Works and Safety

Dear Mr. Curtis:

This advisory opinion is in response to your formal complaint alleging the Gary Board of Public Works ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you a copy of a request letter and any associated documentation. I have enclosed a copy of the Board's response to the complaint for your reference. It is my opinion the Board violated the APRA if the requested records exist, regardless of whether the records have been approved.

BACKGROUND

In your complaint you allege that you requested from the Board by letter dated April 24, 2008 a copy of "Mr. Greenbaum's most recent request letter and any associated documentation." You filed this complaint on May 5, alleging denial of access on our about May 2. Because you do not include a narrative on the complaint form, I cannot ascertain whether the Board responded and denied the request or whether you allege the Board did not respond to the request.

The Board responded to the complaint by letter dated May 20 from Assistant City Attorney Carl Jones. The Board contends that the requested information has not "gone to the Board of Public Works for approval." As such, the Board contends the most recent request letter and any associated documentation is not a public record.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Board is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly,

any person has the right to inspect and copy the public records of the Board during regular business hours unless the public records are exempted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

You submitted the request for access to records to the Board on April 24 by facsimile transmission. You do not indicate whether you received a response from the Board. If the Board did not respond to the request within seven days of receipt of the request, the Board violated the APRA by not providing a timely response. I.C. § 5-14-3-9(b).

Regarding the Board's response to the complaint, it was not appropriate for the Board to deny you access to the record on the basis it had not yet been submitted to the Board for approval. Public records are public records regardless of their status as draft or unapproved records unless an exception to disclosure is present. I.C. § 5-14-3-3. If the records do not exist, certainly the Board could not be required to produce a copy of a record that does not exist.

But to the extent the records exist but have not yet been approved, no exception to disclosure exists for unapproved records. A public record, by definition, is any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2. Nothing in the definition requires a record to have been approved or in final form for the record to be disclosable. As such, if the requested records do exist, those records are disclosable regardless of their approval status, unless an exception to disclosure is present in I.C. § 5-14-3-4.

CONCLUSION

For the foregoing reasons, it is my opinion the Board violated the APRA if the requested records exist, regardless of whether the records have been approved.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Carl Jones, Assistant City Attorney, City of Gary