

April 22, 2008

Ellen Corcella
155 East Market Street
Indianapolis, Indiana 46204

Re: Formal Complaint 08-FC-85; Alleged Violation of the Access to Public Records Act by the City of Crawfordsville Police Commission

Dear Ms. Corcella:

This advisory opinion is in response to your formal complaint alleging the City of Crawfordsville Police Commission ("Commission") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to a record. It is my opinion the Commission has violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request dated March 7, 2008 to the Commission. You requested a copy of the videotape recording of a public hearing held by the Commission on January 22, 2008. You received a letter dated March 17 from the Commission, denying you access to the videotape. The Commission indicated the following: "Per your video tape request, we believe it does not have to be disclosed because it is not a public document." The Commission further indicated the tape was made for the use of the commissioners. You filed this complaint on March 31.

I sent a copy of the complaint to the Commission and invited the Commission to respond to the complaint. I have not received a response to the complaint.

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 Commission 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 Commission

during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A “public record” means 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(m).

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, email, 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).

Here, the Commission received your request on March 7. The Commission sent the response to you on March 17, ten days after receipt of your request. Because the time for response exceeded seven days, it is my opinion the Commission’s response was untimely under the APRA.

Regarding the substance of the request, you requested a copy of the videotape of a public hearing. The Commission does not deny it created a videotape of at least a portion of the public hearing. The Commission claims the videotape was made for the use of the commissioners. The APRA does not distinguish records based on the purpose for which the records are created. This videotape was created by the agency and as such is a public record pursuant to I.C. § 5-14-3-2(m). The Commission has not cited an exception to disclosure, and it is my opinion an exception to disclosure does not exist for this record, if indeed it is a recording of a public hearing. As such, it is my opinion the Commission has violated the APRA by denying you access to the videotape.

CONCLUSION

For the foregoing reasons, it is my opinion the City of Crawfordsville Police Commission violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: John S. Capper, IV, Capper Tully & Reimondo