



STATE OF INDIANA

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September 18, 2008

Anthony DeBonis, Jr.
Smith & DeBonis, LLC
9696 Gordon Drive
Highland, Indiana 46322

Via facsimile transmission

Re: Informal Inquiry 08-INF-35 regarding Housing Authority of the City of Gary

Dear Mr. DeBonis:

This opinion is in response to your informal inquiry dated September 4, 2008. You write to inquire about records you have requested from the Housing Authority of the City of Gary ("Authority") pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). You allege that your client requested records from the Authority by letter you hand delivered on July 14, 2008. You contend your client has received no correspondence or production of records since the initial response on July 17. I have enclosed a copy of the Authority's response to the inquiry for your reference. Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You allege your client submitted via hand delivery to the Authority on July 14, 2008 a request for access to records maintained by the Authority. You allege the Authority responded to the request by letter dated July 17 from Authority Deputy Director Willie Hollingsworth. Mr. Hollingsworth indicated the Authority was working on the request and would provide an appropriate response "as soon as possible." You allege that as of the date of your inquiry, your client had received no further communication or copies of records. You inquire whether the requested records are disclosable and whether the Authority has now denied access to the records.

The Authority responded to the inquiry by letter dated September 18 from Mr. Hollingsworth. The Authority contends it is working to provide the records requested but the work is taking longer than expected because of the number of records requested. The Authority provides a status report for each category of record requested. For many of the requested records, the Authority indicates no such documents exist but Authority is still

researching. For one set of records, financial statements concerning use of federal funds, the Authority contends the request needs to be more specific. Finally, the Authority claims all records it finds responsive to the request will be provided within the next two weeks.

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 Authority is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 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 made by the requester physically appearing in the office of the agency and twenty-four hours have elapsed after any employee of the agency refuses inspection, a denial has occurred. I.C. § 5-14-3-9(a).

Here, your client appeared at the Authority's office on July 14 and delivered a request for access to records. Since the request was made on July 14 by your client's appearance in person at the office and the agency did not respond until July 17 (and none of the intervening days were holidays or weekend days), it is my opinion the response was untimely under the APRA. It is important to note, though, that the Authority did respond three days after receipt of the request.

While the APRA requires a response within a specific timeframe, the same is not true for production of the requested records. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Authority contends the work to collect and copy the requested records has taken longer than expected. While the number of records requested is substantial and may take the Authority some time to compile, in my opinion the Authority should have provided a status report at some point after the July 17 letter. When you submitted your

inquiry, more than seven weeks had passed since the initial response. In my opinion, the Authority should have indicated to you that the work was taking longer than expected. Given the number of records requested, I cannot find two months unreasonable to compile and produce the records. But it is my opinion the Authority should have provided a status report at some point.

Further, the Authority should have contacted you seeking more specification on the one category it contends is not specific. I would note, though, that the Authority's basis for seeking clarity seems to be that without specificity it would be required to copy every financial statement from January 1, 2005 to present. While this may be a request for a large number of records, it is my opinion it is a reasonably particular request, as required by I.C. § 5-14-3-3(a)(1), since it does identify specifically which records are sought.

In answer to your inquiry whether the requested records are required to be disclosed, any person has the right to inspect and copy the public records of the Authority unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). I see no evidence that any of the records fall under an exception to disclosure. The Authority does not contend any of the records are confidential or otherwise nondisclosable. To the extent the Authority would assert an exception to disclosure, the Authority would bear the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1.

Please do not hesitate to contact our office if we can be of further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Willie Hollingsworth, Housing Authority of the City of Gary