

February 26, 2007

David T. Saviola  
8600 Maple Avenue  
Gary, IN 46403

*Re: Formal Complaint 07-FC-23; Alleged Violation of the Access to Public Records Act by the City of Gary*

Dear Mr. Saviola:

This is in response to your formal complaint alleging that City of Gary ("City") violated the Access to Public Records Act by failing to respond timely to your requests.

#### BACKGROUND

You have sent the City of Gary requests for five discrete categories of records. These requests were delivered to the City on January 19. You allege that you have not received a response to the requests as of January 24, when you returned to the City to inquire about the records. Also, you allege that the minutes for the September and October 2006 City Board of Works meetings were not yet prepared and available for inspection and copying when you requested them on January 31.

I sent a copy of your complaint to the City. City attorney Susan Severtson has sent me copies of letters delivering the requested records to you. The minutes of the September and October meetings were ready to be picked up on February 5, in response to your stated need for the records for a meeting on February 8. Yet, as of February 21 you still had not retrieved the minutes. Accordingly, they were mailed to you. In all, 143 pages of documents were mailed to you on February 21. This production followed the mailing by the City on February 5 of four categories of records. These records were produced in response to your requests of January 19 and renewed on January 24.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a).

The time for response contained in section 9 of the Access to Public Records Act is not necessarily the time within which records must be provided. There are no specific timeframes in the APRA; so long as the public agency provides the records within a reasonable period of time, it cannot be said that the agency has “de facto” denied the records. Circumstances such as how old the records are, whether the records must be reviewed to determine whether they can be disclosed in whole or in part, and whether the requests are broad in nature are relevant to the determination of reasonableness. In addition, a public agency may regulate material interference with the regular discharge of the duties and functions of the public agency or public employees. IC 5-14-3-7(a).

Memoranda from public meetings are required to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s proceedings. IC 5-14-1.5-4(c).

I find that the City has not provided its memoranda within a reasonable period of time, where at the time you requested the memoranda on January 31 for the meetings of the Board of Public Works in September and October 2006, they were not yet transcribed. This was a violation of IC 5-14-1.5-4(c).

However, the records requests that you submitted on January 19 appeared to require a substantial amount of compilation, since many requested itemized lists of different accounts and expenditures. The City was required to at least acknowledge receipt of your requests within 24 hours since the requests were hand-delivered. However, the City did produce the records within a reasonable period of time, in my opinion. The City has not stated whether it responded at all to your requests, so I must assume for purposes of this Opinion that no response was forthcoming within 24 hours. I find that if the City failed to respond to your request of January 19 by Monday, January 22, then the City violated the Access to Public Records Act.

The City has not unduly delayed production of the records you requested on January 19, given the scope of the records and the fact that over 150 pages of records were provided, some within two weeks of the request.

## CONCLUSION

For the foregoing reasons, I find that the City should have issued a response to your request within 24 hours, and should have provided the memoranda within a reasonable period of time after the September and October meetings.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Susan Severtson