

May 1, 2001

Mr. Anthony Copeland
Citizens in Action
2006 E. 140th Street
East Chicago, IN 46312

Re: Advisory Opinion 01-FC-22; Alleged Denial of Access to Public Records by the City of East Chicago.

Dear Mr. Copeland:

This is in response to your formal complaint, which was received on April 5, 2001. You have alleged that the City of East Chicago ("City") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, on March 12, 2001, your organization requested a copy of the City's check/warrant register for the year 2000 and you allege that you were denied access to this information. Mr. Justin Murphy, Attorney for the City, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that if the City did not respond to the public records request within twenty-four (24) hours after it was received, then this failure to respond constituted a denial that is actionable under the APRA. Based upon the information provided to me, I cannot reach a more definitive conclusion in this matter.

BACKGROUND

According to your complaint, Mr. Henry Rodriguez, a member of your organization, hand-delivered a written request to the City on March 12, 2001 for a copy of the City's check/warrant register for the year 2000. In addition, it appears that Mr. Rodriguez completed the City's request form requesting the same information. You filed your formal complaint on April 9, 2001 alleging that your organization was denied access to these public records.

In response to your complaint, Mr. Murphy states that the City did receive the request in question on or about March 12, 2001. At the time your organization's request was received, the City was in the process of compiling numerous documents in response to a lengthy request from a local newspaper reporter that was received before the one that Mr. Rodriguez submitted. According to Mr. Murphy, if the City can produce the documents requested while the requestor waits, the City will do that. In the case of more comprehensive or involved requests, such as that submitted by the local newspaper and your organization, the City handles these types of requests on a "first in-first out" basis. Further, Mr. Murphy states that it is his understanding that you were advised that the City would produce the documents, but that it would take some time to compile them and you would be contacted when the documents were

ready for pickup. According to Mr. Murphy, you personally picked up the copies on April 16, 2001.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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 City 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 City 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. A denial is deemed to have occurred if twenty-four (24) business hours elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(a). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court 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, Mr. Rodriguez hand-delivered your request for copies of the 2000 check/warrant register. You did not provide any specific information with your complaint, but claim that the request was denied. It is unclear from your complaint whether you or Mr. Rodriguez actually received any response to your request within this time frame. All that Mr. Murphy's letter states is that you were advised that the City would produce the records, but again there is no time stated for when this response was provided.

Under the APRA, it is my opinion that the City should have responded to the request submitted by your organization within twenty-four (24) business hours after it was received, or by Tuesday, March 13, 2001. If the City failed to provide such a response to you or your organization, this was a denial that is actionable under the APRA. If the City did respond to you or Mr. Rodriguez within the same time period, then there was no denial. Based upon the information that has been provided to me, I cannot reach a more definitive conclusion in this matter.

On a final note, as stated above, the APRA does not state a time for producing records, only for

providing a response to requests. The City's policy of handling more cumbersome requests on a first come-first served basis is appropriate, so long as the City is also providing the necessary response under Indiana Code section 5-14-3-9.

CONCLUSION

It is my opinion that if the City of East Chicago failed to respond to your organization's request within twenty-four (24) business hours of its receipt as is required under Indiana Code section 5-14-3-9(a), this failure to respond was a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure
cc: Mr. Justin Murphy, Attorney
City of East Chicago