

May 1, 2001

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

Re: Advisory Opinion 01-FC-23; 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 10, 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 19, 2001, your organization requested copies of any and all contracts the City has with Dr. Timothy Raykovich for the years 1999, 2000 and 2001 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 an organization may file a formal complaint with this Office under Indiana Code chapter 5-14-5. It is also 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 19, 2001 for copies of any contracts between the City and Dr. Timothy Raykovich for the years 1999, 2000 and 2001. In addition, it appears that Mr. Rodriguez completed the City's request form requesting the same information. You filed your formal complaint on April 10, 2001 alleging that your organization was denied access to these public records.

In response to your complaint, Mr. Murphy first states that he does not believe that you have standing to file a complaint since you did not file the records request and that you are not an attorney. Mr. Murphy further addresses your complaint by stating that the City did receive the request in question on or about March 19, 2001. 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 Mr. Rodriguez, the City handles these types of requests on a "first in-first out" basis.

According to Mr. Murphy, Mr. Rodriguez was specifically informed that the City would produce the documents requested but that it would take some time to compile the documents. Once complied, Mr. Rodriguez would be contacted to come pick them up. On at least two (2) occasions after submitting the request, Mr. Rodriguez met with City Controller's Office employees to check the status of the production of these records. On both occasions, apparently Mr. Rodriguez was advised that the City was in the process of complying with his request and that the copies would be made available to him in the near future. Mr. Rodriguez, in fact, received the copies on April 20, 2001.

ANALYSIS

Standing to File A Formal Complaint

The threshold issue raised by Mr. Murphy's response to your formal complaint is whether you in fact have standing to file a formal complaint in this matter since you did not personally submit the request for access to public records, Mr. Henry Rodriguez did. Under Indiana Code section 5-14-5-6(a)(1), "a person or public agency denied . . . the right to inspect or copy records under Indiana Code 5-14-3 . . . may file a formal complaint with the counselor." Person is defined as follows:

As used in this chapter [Ind. Code 5-14-5], "person" means an individual, a business, a corporation, an association, or an organization. The term does not include a public agency.

Indiana Code §5-14-5-2.

According to the documents provided to me, Mr. Rodriguez did complete a form that clearly states it is on behalf of Citizens in Action. From my past experience with you, I know that you are personally very active in Citizens in Action and the organization is clearly a person under this statute. When you filed your formal complaint, you also made it clear that you were doing so on behalf of Citizens in Action. It is my opinion, therefore, that anyone who is legitimately affiliated with the organization may file a formal complaint so long as it is clear that there is a relationship between the request to the public agency and the formal complaint.

Alleged Denial of Access to Public Records by the City

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 a hand-delivered 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 any contracts between the City and Dr. Raykovich for the years 1999, 2000 and 2001 on March 19, 2001. 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 received any response to your request before you filed your formal complaint.

Mr. Murphy in his response to your complaint states that Mr. Rodriguez was advised by the City that the documents would be produced to him. In fact, Mr. Murphy states that on at least two (2) occasions following the request, Mr. Rodriguez met with City Controller's Office staff to follow-up on his request.

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 some time on Tuesday, March 20, 2001. If the City failed to provide a response to you or your organization within that time period, 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.

It appears that at some point after the receipt of your request, the City did inform Mr. Rodriguez that the contracts would be produced. Mr. Murphy was not clear on whether that response was made within twenty-four (24) hours after the City received the request or at a later time. Based upon the information that has been provided to me, I cannot reach a more definitive conclusion in this matter.

CONCLUSION

It is my opinion that a person for the purposes of filing a formal complaint under Indiana Code chapter 5-14-5 includes an organization such as Citizens in Action. It is also 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