

January 18, 2002

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

Re: *Advisory Opinion 01-FC-77*;

Alleged Violation of the Access to Public Records Act by the City of East Chicago.

Dear Mr. Copeland:

This is in response to your formal complaint, which was received on December 21, 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, you claim that the City failed to provide records requested by Citizens in Action on November 20, 2001. Mr. Justin Murphy, attorney for the Office of Public Information, responded in writing to your request. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the City did not deny you access concerning your November 20th request in violation of the APRA.

BACKGROUND

According to your complaint and attachments, six public records requests were made on behalf of Citizens in Action on November 20, 2001. The following records were requested:

1. A copy of the termination agreement between the Mayor and the Parks and Recreation Board, and Kevin R. Briski ending his employment as Director of Parks and Recreation;
2. A copy of the job description of the duties of the Mayor of East Chicago, the average number of hours worked bi-weekly as mayor and the amount of compensation paid bi-weekly and yearly as mayor;
3. A copy of the job description of the duties of the Chief Executive Officer of East Chicago, the total number of hours worked as C.E.O. bi-weekly and the amount of compensation paid bi-weekly and yearly as Chief Executive Officer of East Chicago;
4. A copy of the job description of the duties of the City Controller of East Chicago, the average number of hours worked at controller bi-weekly and the amount of compensation paid bi-weekly and yearly as Controller;
5. A copy of the job description of the duties of the Chief Financial Officer of East Chicago, the total number of hours worked as C.F.O. bi-weekly and the amount of compensation paid by-weekly and yearly as Chief Financial Officer of East Chicago; and

6. A list of the contractual services that will be provided by the 194,400 dollars that the City Council is requesting for contractual services in the 2002 budget.

After receiving what you allege are "dismal returns" on your requests and excuses that are "too many and always late" you filed a formal complaint with this Office.

In response to your complaint, Mr. Murphy stated that the City did address your November 20th requests in a letter dated December 11, 2001. With respect the request for a copy of the Termination Agreement concerning Mr. Briski, Mr. Murphy stated that Mr. Rodriguez, the requester on behalf of the Citizens in Action, was advised that the City would produce the requested documents but that the production would take a short time. The December 11th letter further stated that there was no termination agreement regarding Mr. Briski.

With respect to the requests for a copy of the job descriptions, the average number of hours worked bi-weekly, and the amount of compensation paid bi-weekly and yearly for the (1) Mayor, the (2) Chief Executive Officer, the (3) City Controller, and the (4) Chief Financial Officer, Mr. Murphy stated in his response to this Office that the City does not maintain documents containing the job descriptions for these positions. As for the number of hours worked and paid to these individuals, Mr. Murphy stated that "the check payroll request has been produced by the Controller's Office, and that Mr. Rodriguez has not picked up the copies of the check register."

ANAYLSIS

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. For requests that are hand delivered, a denial is deemed to have occurred if twenty-four (24) hours elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). 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 the telephone conversation we had on January 16th, Mr. Rodriguez hand delivered the requests to the Public Information Office on November 20, 2001. Therefore, the Public Information Office had twenty-four (24) hours to respond to the request. Mr. Murphy stated in his response that a letter was sent in response to this request on December 11, 2001, which is well beyond the two-four (24) hours mandated by statute. You stated in a telephone conversation with me that at the time the request was delivered to the Public Information Office, Mr. Rodriguez was advised that the requests would be granted. Therefore, it is my opinion that the letter dated December 11, 2001 was merely a follow-up to the response given at the time the request was made on November 20, 2001, which was obviously within twenty-four (24) hours of the request. Therefore, the City did not violate the APRA with respect to this request.

I would like to take this opportunity to advise the City to make sure that responses to public records requests are clear as to which records will be produced and those that will not be produced either because the records are nondisclosable or do not exist. A clear response from the person responding to the public records requests should help to eliminate confusion on the part of the requester and ultimately complaints about failure to respond on the part of the City.

CONCLUSION

It is my opinion that the City of East Chicago responded to your request within the twenty-four (24) hours required by statute, and consequently did not violate the Access to Public Records Act.

Sincerely,

Sandra K. Barger
Staff Attorney

Enclosure

cc: Mr. Justin Murphy, Public Information Office
Attorney
