



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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January 9, 2014

Mr. Douglas M. Wright
1345 Wallace St.
Gary, IN 46404

Re: Formal Complaint 14-FC-292; Alleged Violation of the Access to Public Records Act by the City of Gary Law Department

Dear Mr. Wright,

This advisory opinion is in response to your formal complaint alleging the City of Gary Law Department ("Department"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Ms. Romeka Bonds. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 26, 2014.

BACKGROUND

Your complaint dated November 24, 2014 against the City of Gary Law Department (Department) alleges the Department violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to acknowledge your request within seven days and for charging a fee in excess of what is allowed by law.

On or about October 20, 2014, you submitted a public records request to the City of Gary Law Department. It was received on or about October 31, 2014; however, the certified mail receipt indicates it was mailed October 23, 2014 and delivered October 28, 2014. The Department acknowledged your request on November 3, 2014. On November 19, 2014, the Department sent you a fee schedule for various public records. This included a \$10.00 charge for a DVD of a committee meeting. You take exception to the delay in the acknowledgement, as well as the \$10.00 copy fee.

The Department responded to your formal complaint with accompanying documents, but no additional argument.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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.” See Ind. Code § 5-14-3-1. The City of Gary Law Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

U.S. Postal records indicate your request was delivered on October 28, 2014. An acknowledgement was faxed to you on November 3, 2014. This is within the seven (7) day response time required by law. According to Ind. Code § 5-14-3-3, a public agency has a reasonable time to respond to a request. In this case, approximately eleven (11) business days elapsed between receipt of the request and the notification your request was available day (Veterans Day and Election Day were subtracted from the calculation). Eleven (11) business days is reasonable time to copy and produce a public record.

As for the \$10.00 charge - in relevant part, Ind. Code § 5-14-3-8(g) states that for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, which does not exceed the sum of the following: (1) The agency's direct cost of supplying the information in that form. (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

In *Opinion of the Public Access Counselor 13-FC-293*, I found a twenty-five dollar (\$25.00) fee was reasonable. In that particular Opinion, I wrote:

Extraordinary fees place a significant barrier in the way of public access. It is recognized an open government is one that disseminates information in the least restrictive manner. That being said, a government can also be a good steward of transparency if the fees charged for copies are reasonable in nature and are related to the normal course of business. Of course the public agency should be particularly mindful that any fee charged should be consistent in regard to all requests for information.

Accordingly, I find that a \$10.00 charge for a compact disc is a reasonable copy fee.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Gary Law Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal stroke extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Romeka Bonds