

June 10, 2005

Mr. Charles C. Garnette
4602 Lafayette Esplanade
Fort Wayne, IN 46806

Re: Formal Complaint 05-FC-95; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne

Dear Mr. Garnette:

This is in response to your formal complaint alleging that the City of Fort Wayne ("City") violated the Access to Public Records Act by failing to disclose records.

BACKGROUND

In an undated letter, you requested a list of Fort Wayne Neighborhood Housing Partnership clients, their names, addresses and telephone numbers that were submitted to the Fort Wayne Metropolitan Commission for review. In your complaint, you aver that you hand-delivered the letter on April 11, 2005. You also stated that you would like to know the business relationship each of these individuals has with the Neighborhood Partnership. "These relationships are to be denoted as to whether they are purchasing, leasing, or renting property from NHP," you state. You also requested a copy of all reports in your possession concerning any "statements, rulings, opinions, or findings on NHP, by the Fort Wayne Metro Commission."

On April 14, 2005, the City responded to your request. The letter acknowledged receipt of your request and indicated the City's intention to comply. Three and one-half weeks later, you sent me your formal complaint. You stated that the documents you requested were given to the local press but were denied to you as a private citizen. You stated you suspected that some of the records are missing from the file.

After forwarding a copy of your complaint to the City, Associate City Attorney Paul A. Keaton responded. A copy of his letter is attached for your reference. Mr. Keaton denied that the City was denying you access to any of the records that it maintains that are responsive to your request. Mr. Keaton averred that he had told you that you would receive the same records

that had been supplied to Dan Stockman, whom I take to be with the local media. He also indicated that he had a conversation with you informing you that some of the records were stored off-site and would be available after delivery to the City's offices. Mr. Keaton expected to hear from you after you had allowed "the appropriate time for delivery." The records are now available, and Mr. Keaton asked that you contact him to set up an appointment to inspect the records.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons 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." 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(a). The request that is received by U.S. Mail or facsimile is deemed denied if the agency has not responded within seven (7) days. IC 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 the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(e).

According to your complaint, you hand-delivered the request to the City. Mr. Keaton indicated in his April 14 responsive letter to you that he had received the letter in his office on April 13. If the letter was hand-delivered to the City on May 11 as you stated, then the April 14 response was late because it was not issued within twenty-four hours of the *City's* receipt; it does not matter when Mr. Keaton received it in his office. If the letter was mailed, the response of the City was not tardy, because it was issued within seven days of the date received, likely to be April 13 as the April 14 letter recites.

Beyond the issue of whether the request was deemed denied by the provisions of the APRA, I do not find merit in your contention that the City has been withholding or even destroying documents, on the record before me. The City has stated that at least some of the records you requested are stored off-site, and some time was needed for delivery to the City legal office. Also, Mr. Keaton's response indicated that the precise list you requested does not exist,

but that the City was making available to you records from which the information could be gleaned.

The City is not required to create a record to meet a person's specifications. Your request that the City disclose a list on which the business relationships the persons have with NHP "are to be denoted" has the earmarks of a request for a specific list to be created by the City. The APRA does not require that the City compile this information in a new document. However, I read the City's response to your complaint to promise that any records that do exist that contain the information you seek will be disclosed to the extent the information is not confidential.

On these facts, I do not believe that the City violated the APRA except as indicated previously for a tardy response. I do take this opportunity to advise the City that it should endeavor to keep persons apprised of the expected date of delivery of records that are being moved from storage. In particular, I was confused as to how you would know when the records had arrived from storage, when that information would be available to the City.

Also, where a person requests several different records, the City should endeavor to identify all the records that it maintains that are responsive, and specifically except any that are not disclosable, citing the specific exemption that applies. IC 5-14-3-9(c). It is not sufficient for a public agency to state generically that it intends to disclose all disclosable records and deny the confidential or otherwise nondisclosable records, without specifying what records are nondisclosable. In any case, it appears that the City is ready to produce records to you.

CONCLUSION

The City of Fort Wayne has not violated the Access to Public Records Act with respect to timely production of the records.

Sincerely,

Karen Davis
Public Access Counselor

Cc: Paul Keaton