



# STATE OF INDIANA

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May 2, 2011

Mr. Charles Rocek  
44 Mason St.  
Hammond, IN 46320

*Re: Formal Complaint 11-FC-86; Alleged Violation of the Access to Public Records Act by the City of Hammond*

Dear Mr. Rocek:

This advisory opinion is in response to your formal complaint alleging the City of Hammond ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the mayor's office on March 31, 2011, but we have not yet received a response.

## BACKGROUND

In your complaint, you allege that on March 3, 2011, you requested several sets of records from the City, including (1) copies of rental registration forms and receipts and inspections held by the City; (2) copies of all rental registration receipts issued by the City between December 25, 2010, and February 24, 2011; and (3) a copy of citations issued to certain property owners between January 27, 2011, and February 24, 2011.

After you submitted your complaint, you forwarded correspondence between you and the City's attorney, Kristina Kantar, regarding your requests. On March 29th, Ms. Kantar wrote to you to explain that the City had responded to several records requests from you in a timely fashion. You replied to Ms. Kantar on April 1st and stated that her March 29th correspondence did not address the requests that you submitted to the City on March 3rd, and that the March 3rd requests were the subject of this complaint. Subsequently on April 20th, you informed our office that you had not received any further correspondence from the City regarding your March 3rd requests.

## ANALYSIS

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). 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. I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the City failed to respond to your written March 3rd requests within seven days of receiving them, the APRA deems your requests denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the City's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the City, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the City has not provided a justification for withholding the records at issue here, it is my opinion that the City has failed to sustain its burden.

If the City cannot justify withholding the records under the APRA, I encourage the City to release the records to you as soon as possible. To the extent the City persists in its denial of access following the issuance of an advisory opinion from this office and you believe the City to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City has not sustained its burden of proof to deny your March 3rd requests.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Mayor Thomas McDermott, Jr.