



STATE OF INDIANA

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May 10, 2011

Mr. Charles C. Garnette, Sr.
4206 Arlington Avenue
Fort Wayne, IN 46807

Re: Formal Complaint 11-FC-97; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne

Dear Mr. Garnette:

This advisory opinion is in response to your formal complaint alleging the City of Fort Wayne ("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 City on April 11, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that you hand-delivered a records request to the City on March 7, 2011. You sought access to records regarding Indiana State Rep. Phil GiaQuinta, who you claim works as a manager with City Utilities, an agency of the City. As of April 7th, you had not received any responsive records from the City.

Although we did not receive a response from the City, you sent us a copy of the City's original response to you. That letter is dated March 8, 2011, and it states that the City received your request and intended to comply within a reasonable amount of time by producing all non-confidential 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." I.C. § 5-14-3-1. The City is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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 in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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. Here, the City initially responded to your March 7th hand-delivered request on March 8th, which is within the seven-day period that the APRA prescribes for responding to written requests.

That said, the question remains whether the City has failed to produce records within a reasonable amount of time by not yet producing records in response to your March 7th request. The APRA provides no firm deadlines for the production of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Without an explanation from the City as to why it took the time it did to actually produce responsive records, it is my opinion that the City has failed to show that it has acted reasonably in response to your request.

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 continues to deny access following the issuance of this opinion and you believe the City is 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 shown that it acted within a reasonable period of time following your request. The City should produce any responsive, non-confidential records -- including redacted records if they are partially disclosable -- that the City maintains as soon as practicable.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Mayor Tom Henry