



STATE OF INDIANA

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April 9, 2014

Mr. James Nowacki
148 Hancock St.
Gary, IN 46403

Re: Formal Complaint 14-FC-51; Alleged Violation of the Access to Public Records Act by the City of Gary Department of Redevelopment and Economic Development Commission

Dear Mr. Nowacki,

This advisory opinion is in response to your formal complaint alleging the City of Gary Department of Redevelopment and Economic Development Commission ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has provided a response to your complaint via Ms. DeKeyu Sumner, Esq., Assistant City Attorney. Her response is attached 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 March 13, 2014.

BACKGROUND

Your complaint dated March 13, 2014 alleges the City of Gary Department of Redevelopment and Economic Development Commission violated the Access to Public Records Act by not timely providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On March 7, 2014 you delivered in person a hand-written request for public records addressed to the City of Gary Department of Redevelopment and Economic Development Commission. You sought documents relating to a plan of finance for a building project. You had not received a response at the date of the filing of your formal complaint.

The City responded by relaying their public records protocol, which was not followed in this case. They submitted evidence suggesting you were aware of the public records request process and had availed yourself of that procedure as recently as December of 2013. They argue you did not use the proper form or direct the request to the Law Department (the agency handling the City's public record requests). Citing Ind. Code § 5-

14-3-3(2)(a), the City contends the reason for the lack of production was your failure to follow the City's published procedure.

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." See Ind. Code § 5-14-3-1. The City of Gary Department of Redevelopment and Economic Development Commission are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City'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.

The City suggests you had a face-to-face conversation with an administrative assistant in the Redevelopment Department when you served your public records request. At that time, the administrative assistant informed you the Law Department was the appropriate place to file your request. This conversation satisfies the acknowledgement requirement of Ind. Code § 5-14-3-9(a). Your records request was not denied; you were simply asked to serve the request on a different department.

I have recently held in the *Informal Opinion 14-INF-09*, a City may dictate the way public records requests are handled and processed, to wit:

if there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed.
See Ind. Code § 5-14-3-3(a)(2).

As long as the City conspicuously publishes a consistent, non-discriminatory policy for the receiving of public records request, they may compel a requestor to follow that procedure. Examples submitted by the City demonstrate you have previously availed yourself of that process as recently as December of 2013. Therefore, I can only conclude you were aware of the City's established procedure.

You allegedly told the administrative assistant in the Redevelopment Department you would not be following this protocol because a *Notice of Public Hearing* published by the Economic Development Commission directed all "written comments" to be submitted to the Executive Director of the Commission. A request for public records is mutually

exclusive of a written comment pursuant to a public hearing. They are two different things and I do not find the terms to be ambiguous or misleading. It is clear the City's policy is not created to cause confusion or an impediment to access.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the City of Gary Department of Redevelopment and Economic Development Commission has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. DeKeyu Sumner, Esq.