



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 23, 2009

Charles Kirkland
1633 Taft Street
Gary, Indiana 46404

Re: Formal Complaint 09-FC-136; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Kirkland:

This advisory opinion is in response to your formal complaint alleging the City of Gary ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The City's response to the complaint is enclosed for your reference. It is my opinion the City's response may have been untimely but the City did not otherwise violate the APRA.

BACKGROUND

You filed the present complaint on June 1, 2009 (postmarked May 28). You did not provide a narrative description of your allegation in the space on the complaint form reserved for a description of the denial of access. You indicated the basis of the complaint was denial of access and included copies of two letters you sent to the City in April 2009.

The City responded to the complaint by letter dated June 22 from Corporation Counsel Susan Severtson. The City explains the nature of your business relationship with the City. The City contends that since the City's termination of its agreement with you, you have repeatedly requested the same information regarding subsequent auctions. The City contends that it has responded to each of your requests. The City indicates that the next sale after your request was held on May 1 and the information regarding the sale was sent to you on June 15, after it was compiled. Further, the City indicates that certain information you requested would be available directly from the operator.

ANALYSIS

The public policy of the APRA states, "(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 clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-

2(m). 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 the APRA. I.C. § 5-14-3-3(a).

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 days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here it is unclear whether the City initially responded to your request within seven days of receipt. If the City did not acknowledge the request within seven days of receipt, the response was untimely. I.C. § 5-14-3-9(b). The City has now provided you records responsive to the request; as such, it is my opinion the City has not otherwise violated the APRA.

I would note that it appears you have requested access to records before they are created. Nothing in the APRA requires an agency to honor a request submitted before records are created. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

CONCLUSION

For the foregoing reasons, it is my opinion the City's response may have been untimely but the City did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Susan Severtson, City of Gary Corporation Counsel