



STATE OF INDIANA

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August 12, 2009

Nancy Garbrecht
6170 Joliet Road, Suite 200
Countryside, Illinois 60525

Re: Formal Complaint 09-FC-173; Alleged Violation of the Access to Public Records Act by the City of Valparaiso

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging the City of Valparaiso ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your requests for copies of records. The City's response to the complaint is enclosed for your reference. It is my opinion the City did not violate the APRA by not responding to requests it did not receive.

BACKGROUND

You allege that on June 29, 2009 and July 14, 2009 you sent requests to the City wherein you requested copies of records. You filed the present complaint on August 4, alleging you had received no response to the requests. You further provided a copy of a message you received indicating the second request had been deleted without being read.

The City responded to the complaint by electronic mail message dated August 4 from Clerk-Treasurer Sharon Swihart. Ms. Swihart contends she did not receive your requests. She further indicates she searched her deleted electronic mail messages and did not find any request from you. Ms. Swihart notes that her electronic mail address was changed and this might be the cause for missing the messages.

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 (or as this office has said, electronic mail) 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).

Here the City asserts it did not receive your request. If the City did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the City did not receive your request, the Clerk-Treasurer did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Sharon Swihart, City of Valparaiso