

November 15, 2004

Mr. Jerry Lee Peteet
649 Taft Street
Gary, IN 46408

Re: Formal Complaint 04-FC-192; Alleged Violation of the Access to Public Records Act by the Gary City Court, City of Gary

Dear Mr. Peteet:

This is in response to your formal complaint alleging that the Gary City Court, City of Gary ("Court") violated the Access to Public Records Act by failing to provide you access to public records. I find that the Gary City Court, City of Gary did not violate the Access to Public Records Act.

BACKGROUND

On August 2, 2004, you submitted a request for copies of certain public records of the Gary City Court, some of which were the Court's financial records which are maintained by the Gary City Comptroller's Office. The City began processing your request, which it believed was related to your termination as a Public Defender. When you were reinstated, the City believed that you had abandoned your request. On August 31, you submitted another request renewing your interest in obtaining copies of certain public records. Specifically, you requested the following:

1. A listing of all the Public Defenders and Pauper Attorneys providing the date of hire and their salaries for 2003 and 2004 from the Gary City Court;
2. A list of all persons or agencies that receive monies from the Gary City Court budget and/or any other Gary City Court Program for Professional Services for 2003 and 2004;
3. A list of all persons that have utilized monies from any and all Gary City Court programs and/or the Gary City Court budget for Travel/Education for the year of 2003 and 2004;

4. A list of all expenditures for subscriptions, dues, refunds, awards and indemnities for 2003 and 2004 from the Gary City Court;
5. A list of all medical supplies purchased including bills of lading (sic) for 2003 and 2004 from the Gary City Court;
6. A copy of all ordinances submitted to the Council for the creation and/or removal of positions, expenditures, new programs, or any other fiscal related expenditure for 2003 and 2004 from the Gary City Court;
7. A complete list of all expenditures and all monies received from the Gary City Court Drug Program for 2003 and 2004;
8. A complete list of all expenditures and all monies received from the Gary City Court Defensive Driving Program for 2003 and 2004;
9. A complete list of all expenditure and all monies received from the Gary City Court Alcohol Program for 2003 and 2004;
10. A complete list of all monies, services, or anything of value received by the Court or by Judge Monroe for the referral of cases to various drug and alcohol programs listing the amounts received and/or series etc., including the names of the parties or organizations making the contribution for 2003 and 2004;
11. A copy of all accountings, submissions etc., for the Gary City Court and all of its programs submitted to the City of Gary, the Clerk's Office and/or the State Board of Accounts for 2003 and 2004 to date;
12. A list of all persons hired, retained or receiving any monies from the Gary City Court or any of the Court programs that work in the Law Office of Judge Monroe, either sharing space or working directly or indirectly with the Judge including the spouses, or blood relatives of these persons;
13. A list of all agencies to which the Gary City Court refers cases and/or persons for drug, alcohol, emotional mental etc. treatment for 2003 and 2004; and
14. A copy of the rules, regulations, policy and procedure for the Gary City Court as it relates to its operation and employee relations.

On August 31st, you received a letter from the City advising you that the Court was reviewing the records responsive to your request and that an additional response would be provided on or before October 1st in which the Court would update you on its progress in assembling the requested records. On September 3rd, you replied, requesting that some of the documents be provided to you within seven (7) days, and that the remainder be provided to you by October 1st. The Gary City Court and the City Comptrollers Office worked together to provide the requested documents, and on September 27, 2004, they forwarded to you numerous documents in response to your request.

You submitted a formal complaint alleging that you were not provided with copies of all of the requested records. You also request attorney fees and costs. Your complaint was received by this office on October 15, 2004. I forwarded a copy of your complaint to the City of Gary, and Ms. Karen Freeman-Wilson, attorney for the Gary City Court, responded. I have enclosed a copy of Ms. Wilson's response for your reference. Ms. Wilson states that both she and your attorney Willie Harris believed that you had intended to abandon your public records request once you were reinstated. She also states that once you reiterated your request for the records, she worked diligently with the City of Gary to identify requested records. She states that all the

records that you requested and that are maintained by the Court were given to you. In follow-up to her letter, she also stated that the spreadsheet generated by the Gary City Comptroller was in response to your requests #2, 3, 7, 8, 9, and 11.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency, unless an exemption applies. IC 5-14-3-3(a). An agency receiving a request for records via U.S. mail has seven (7) days to respond to the request. A response does not necessarily require that the agency provide the requested records. Rather, the agency must acknowledge receipt of the request and indicate how and when it intends to provide the records, or explain its basis for denying any record. IC 5-14-3-9(b). There is no set time for an agency to produce records. The time for production must be reasonable under the circumstances.

You have alleged that it took three months to obtain the records, and then you were given only part of the records that you requested. It appears that there was some misunderstanding regarding whether you continued to seek disclosure of a substantial number of records following your reinstatement. I am not in a position to determine whether the facts would support the Court's reasonable belief that you no longer were requesting records. It would be in a court's domain to make this fact-sensitive determination. However, I note for the Court's benefit that a better practice in this instance would have been to seek a written cancellation of your request from you prior to abandoning the disclosure of the records you sought.

I also believe that the time for production of the records, less than one month from your renewed request, was reasonable, given the number of records, the complexity of the requests, and the coordination required with the Comptroller's office.

You also allege that the production of records was incomplete. After my staff attorney contacted you to learn which of your 14 requests were not fulfilled (Ms. Freeman-Wilson supplied me with copies of the records that she sent you), you specified the records that were not sent. Upon further contact with Ms. Freeman-Wilson, I learned that those records (#2, 3, 7, 8, 9, and 11) were not maintained by the Court, and that the Comptroller's document was in response to those requests.

An agency is not required to create records to fulfill the request of a person for public records. The requests that you claim are missing are for lists of financial information with specific data elements. It is not unusual or unlikely for an agency to not maintain financial data in a format or way that conforms to a person's desire for data. The Court assisted in fulfilling your requests for financial information by giving you the report of the Comptroller covering the dates of your request. This is all the Court was required to do. I advise agencies that are responding to an itemized request for documents to specify which documents that are being disclosed fit which request, making it clear to the person asking for records how the agency is responding. Also, the agency should clearly state in its response that it does not maintain a particular record. Nevertheless, in my opinion, the Court did not violate the APRA when it failed to provide you with records that it does not maintain.

With respect to your request for attorney fees and costs, I do not have authority to award attorney fees or costs, even where I find that the public agency failed to comply with APRA. Only a court may do so under the circumstances set out in IC 5-14-3-9(i).

CONCLUSION

For the foregoing reasons, I find that the Gary City Court did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Karen Freeman-Wilson