

August 9, 2006

*Sent Via Facsimile*

Rod Crossland  
201 S. Walnut  
Muncie, IN 47305

*Re: Formal Complaint 06-FC-115; Alleged Violation of the Access to Public Records Act by the City of Muncie*

Dear Mr. Crossland:

This is in response to your formal complaint alleging that the City of Muncie (“City”) violated the Access to Public Records Act by denying you records when you first requested them.

#### BACKGROUND

You allege in your formal complaint that you “verbally requested” all records on two properties, 201 and 205 S. Walnut, on Friday, July 7. An unidentified individual in the office stated that you could not have the records, on authority of the attorney for the agency. You stated in your complaint that you intended to fax to the agency a hard copy of the written request. You seek an opinion stating that no exemption exists to allow the agency to withhold the records. You requested priority status for your complaint alleging that you had a court hearing three days after you faxed me your complaint. However, you did not allege the circumstances in 62 IAC 1-1-3 that would require priority handling of your complaint. Moreover, any advisory opinion issued in seven days would have still not permitted you to receive the record for the hearing. Therefore, this opinion is issued thirty days after your complaint was filed.

I sent a copy of your complaint to the City. Mr. M. Edward Krause III, attorney for the City, responded by letter, a copy of which is enclosed for your reference. Mr. Krause confirmed that your verbal request of July 7 was in person. When you requested the records for certificates issued in 1985 and 2001, the secretary informed you that the office does not retain documents for

more than two years. When you asked for a copy of the record retention policy of the agency, you were denied a copy of that policy.

Mr. Krause received on July 7 a written request for documents which included the entire Building Commissioner's file as it related to the two properties. When you called Mr. Krause to request a written document retention policy, he told you that such a document does not exist. Mr. Krause further agreed that he would respond to your faxed records request within seven days. Mr. Krause enclosed with his response to your complaint a copy of a July 10 letter to you, acknowledging receipt of your written request and promising a fuller response on or before July 14. On July 14, the City provided a letter outlining what responsive records it had and would produce, and what records do not exist. This letter was sent after you filed your formal complaint.

Since receiving this letter, you sent me an e-mail stating that you called the Building Commissioner. The Commissioner denied knowledge of your records request. From this, you infer that the City is claiming to comply but actually has no intention of complying.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency or makes the request by telephone and 1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made, or 2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made, whichever occurs first. IC 5-14-3-9(a).

If a person requests a record by mail or facsimile, a denial does not occur until seven (7) days have elapsed from the date the public agency receives the request. IC 5-14-3-9(b).

You were physically present in the offices of the City, and allege that you were told you could not have records on the authority of the agency's attorney. If the person designated by the public agency as being responsible for public records release decisions refused your request on July 7, then a denial of disclosure occurred. It is not clear whether you received this denial from the person so designated, so I cannot state definitively whether you were denied access. However, upon your serving a written request, you received a timely and adequate response from Mr. Krause, representing the City. He then kept his promise to give you a fuller response by July 14.

In his July 14 letter indicating that the documents would be furnished to you, he stated that the records would be provided within a reasonable time. You state that you called the Building Commissioner on July 17, and he did not seem to know what request you were referring to. I cannot explain the Building Commissioner's response. However, it is entirely possible that the attorney Mr. Krause is coordinating the compiling of responsive records. There is no strict timeframe in the Access to Public Records Act within which records must be

produced. Therefore, the records should be compiled within a reasonable amount of time under the circumstances. I encourage Mr. Krause to stay in touch with you and to immediately supply you with any records that can be made available sooner than others.

Although you do not specifically complain that the City has failed to retain records beyond two years, I wish to make it clear that the City may destroy records subject to Indiana Code 5-15 *only* in accordance with record retention schedules under Indiana Code 5-15. Where the City concedes it does not maintain a document retention policy, it may not destroy any records subject to Indiana Code 5-15.

#### CONCLUSION

For the foregoing reasons, I find that the City of Muncie responded to your written request for records in a timely manner, but may have denied you a record when you were present in the City's office.

Sincerely,

Karen Davis  
Public Access Counselor

cc: M. Edward Krause