

September 25, 2006

*Sent Via Facsimile*

Daniel R. Baughey  
1704 West Water Street  
Hartford City, IN 47348

*Re: Formal Complaint 06-FC-151; Alleged Violation of the Access to Public Records Act by the Hartford City Board of Public Works*

Dear Mr. Baughey:

This is in response to your formal complaint alleging that the Hartford City Board of Public Works (“City”) violated the Access to Public Records Act by denying you a record. I find that the City violated the Access to Public Records Act when it denied you a copy of a record because you are involved in legal proceedings against the City.

#### BACKGROUND

You requested on August 18, 2006 a copy of minutes and an audiotape from the July 17, 2006 Board of Public Works meeting. The City Clerk-Treasurer Janet Gilland stated she needed additional time to compile the records. On August 23, you hand-delivered to the City a letter requesting a copy of the minutes pursuant to the Access to Public Records Act. On August 24, you received in reply a fax enclosing a memorandum to Ms. Gilland from City Attorney Allen C. Mattson. In the memorandum, Mr. Mattson advised Ms. Gilland that the requester must make his requests through the discovery rules of the Indiana Trial Rules, where the records are the subject of pending litigation with the requester as plaintiff versus the City.

You took that as a denial of the record and filed this formal complaint on August 25. You alleged that the City failed to cite the statutory exemption authorizing the City to withhold the minutes. In response to your formal complaint, the City stated that upon further review, the records would be provided. The City enclosed the letter it sent to you on September 11, 2006 providing the records. You confirmed to me that you have received the records you requested.

## 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). If a public agency receives an in-person request for a record, the public agency is required to respond within 24 hours or the request is deemed denied. IC 5-14-3-9(a). If the public agency denies a written request, the public agency must deny the request in writing, with a statement citing the specific exemption or exemptions that authorize the public agency to withhold the record, as well as the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The City denied your record request on August 24 with the memorandum from City Attorney Mattson. The response of the City was timely in that it was issued within 24 hours of receipt of your request, but the City violated the Access to Public Records Act when it denied your request without citing the exemption or exemptions that authorize the agency to withhold a copy of the minutes of a public meeting.

In fact, no exemption would allow the City to withhold a copy of the minutes of a public meeting. The fact that the requester has sued the City and could receive the records using discovery is not an exemption under the Access to Public Records Act. The City has now reconsidered its denial and supplied you with records. However, the City violated the Access to Public Records Act when it issued a denial on August 24 without justification.

## CONCLUSION

For the foregoing reasons, I find that the Hartford City Board of Public Works violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Janet Gilland