

November 22, 2006

Sent Via Facsimile

Mr. William M. Murakowski
40 E. Joliet Street
Scherverville, IN 46375

Re: Formal Complaint 06-FC-186; Alleged Violation of the Access to Public Records Act by the City of East Chicago

Dear Mr. Murakowski:

This is in response to your formal complaint alleging that the City of East Chicago ("City") violated the Access to Public Records Act by not responding to the request.

BACKGROUND

Your complaint, filed with the Office of the Public Access Counselor on October 23, states that the request for records concerning a specific employee of the City was deemed denied because the City did not respond. In your factual summary, you state that the request was filed on October 3, 2006. It appears the request to the City Controller's Office was sent by facsimile. You requested certain personnel file information regarding a City employee. In your factual summary, you said that your secretary spoke with Elida from the Controller's Office on October 3 and confirmed receipt of the request. Elida told your secretary that she would forward the request to the person in the Controller's office who handled all public records requests. On October 17, your office called and spoke with Roselyn, who informed your staff that she would speak with Mr. Charles Pacurar, the City Controller, to find out why you had not received the information. When Roselyn called your office, she informed you that the request had been forwarded to the law department. As of the date of your complaint, you have not received the records.

I sent a copy of your complaint to the City Controller. Mr. Charles Pacurar responded by letter, a copy of which is enclosed for your reference. Mr. Pacurar described the difficulty his

small staff has in fulfilling the many requests for records, including 84 separate requests received so far in 2006. The other duties of the office keep him from filling requests more timely, but he has never intended to deny anyone disclosable public records. When I reached Mr. Pacurar by telephone, he indicated that on November 1 he had copied the information and it was still waiting to be picked up. He stated that normally the office would call the requester to inform them that the material was available, but he could not confirm whether that had happened in this case.

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 (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). What is contemplated by a response is an acknowledgment that the public agency received the request, and some indication of how or when the agency intends to comply. It appears to me that the City certainly acknowledged receiving the request, but the only information that you were able to glean was that the request had been referred to several different persons within the Controller’s office before being sent to the legal department.

While it would have been more helpful to you to have information concerning when the agency would comply, I do not think that the City failed to respond to your request. By your account, your office learned on the date that the request was faxed that the City had received the request, and that the City had forwarded it to the person who normally handles such requests. At no time did the City indicate it would deny your request, so the communication by telephone did not violate the APRA with respect to a denial being in writing. *See* IC 5-14-3-9(c)(requiring the public agency to deny a written request in writing).

However, your complaint also sets forth your concern that as of October 23, you have not received the records. That date is nearly three weeks after the City received your request. Records should be produced within a reasonable period of time. A public agency shall regulate material interference with the regular discharge of the other functions or duties of the public agency or public employees. IC 5-14-3-7(a). In the City’s complaint response, it is apparent that the Controller’s office attempts to handle these requests timely, but is not always able to because of staffing issues and the great number of requests received. In addition, the City explains the many duties and functions it must perform in addition to fulfilling public records requests.

Information from a personnel file that must be disclosed includes information about the person’s compensation, job title, and past employment, among other things. *See* IC 5-14-3-4(b)(8). From your request I did not discern that you were seeking any information that could have been withheld from disclosure. However, Mr. Pacurar has told me that the payroll information you sought took some time to compile from the payment records. He was unable to tell me when I spoke with him how many pages of records were produced on November 1.

I cannot conclude that the City's production was unreasonable, but the one month production time is rather long. In truth, had you received updates from the City Controller at reasonable intervals, you may not have filed this complaint. I have often advised public agencies to stay in touch with the requester to let the requester know when the public agency expects it will be able to fulfill a request.

The records are now available and have been available since November 1, according to Mr. Pacurar. It is incumbent on the public agency to affirmatively contact the requester to inform him when records are available. If the City failed to contact you and instead relied on you to call the City to inquire further, then the delay after November 1 was unreasonable and resulted in a denial of the records, in my opinion. This is especially true here, where at the time the records were ready to inspect, the City had already received your complaint.

CONCLUSION

For the foregoing reasons, I find that the City of East Chicago was required to produce the records within a reasonable period of time, should have informed you of its progress in compiling the records at reasonable intervals, and should have called you to say that the records were available for inspection and copying.

Sincerely,

Karen Davis
Public Access Counselor

cc: Charles Pacurar