

December 11, 2006

Sent Via Facsimile

Neil E. Gath
Fillenwarth Dennerline Groth & Towe
Attorneys at Law
1213 N. Arlington Avenue, Suite 204
Indianapolis, IN 46219

Re: Formal Complaint 06-FC-196; Alleged Violation of the Access to Public Records Act by the City of Shelbyville

Dear Mr. Gath:

This is in response to your formal complaint alleging that the City of Shelbyville (“City”) violated the Access to Public Records Act by failing to timely disclose records. I find that the City was not required to provide information that it did not maintain.

BACKGROUND

You represent Laborers’ International Union of North America, Local Union No.120 (“Union”). On October 16, 2006, Chris Brickey, Field Representative for the Union wrote the City’s Department of Parks and Recreation (“Department”) to request information concerning the Blue River Park construction contract. Specifically, the Union requested 1) the name of the construction manager, 2) a listing of every prime contractor on the project, 3) the scope of work for each prime contractor, 4) all sub-contractors for each prime contractor, and 5) for each subcontractor, the scope of work for each of the awarded contracts.

On behalf of the Union, you filed a formal complaint with the Office of the Public Access Counselor, complaining that as of the date of the complaint, the City has neither provided the records nor provided any explanation as to why it has failed to produce the requested items. You had written the City on October 30 asking for an update with respect to the compilation of the records. The City had never responded to your October 30 letter.

I sent a copy of your complaint to the City. Receiving no written response, I called the City and spoke with Karen Martin and the City's attorney, Brett Haacker. The City stated that it initially responded to your request, as your October 30 letter acknowledges. However, the City maintained that it had no records that were responsive to your request, and would have to obtain the information first before the City could disclose the information to you. The City simply could not forward information that it did not have. The City has now disclosed the information to you.

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). The requested records should be disclosed within a reasonable period of time; there are no standards for when a public agency must disclose records in the Access to Public Records Act.

A public agency is not required to compile or create a record to satisfy a person's request for information. Rather, the APRA requires that a public agency make available its current records.

According to the City, at the time of your request, the City maintained no documentary information concerning the Blue River Park project's prime and subcontractors. The City apparently had to compile the information from other sources. The City was not required to compile the information and create a new record to satisfy your request for information, under the APRA. Therefore, the City did not violate the APRA by taking a long time to compile the records because the City did not have records that were responsive to your request. I am uncertain whether the City made it clear to you that at the time of your request, no records existed. The City should have let you know, if it did not, that the City was agreeing to obtain information that did not already exist and creating a record to satisfy your request.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Brett Haacker