

February 13, 2008

Jeremy Gaddis  
PO Box 572  
Mitchell, Indiana 47446

*Re: Formal Complaint 08-FC-37; Alleged Violation of the Access to Public Records Act by the City of Mitchell*

Dear Mr. Gaddis:

This advisory opinion is in response to your formal complaint alleging the City of Mitchell ("City") violated the Access to Public Records Act ("APRA")(Ind. Code 5-14-3) by denying you access to records. It is my opinion the City violated the APRA when it redacted information from a lease agreement with no indication why the information was redacted.

#### BACKGROUND

In your complaint you allege you submitted a request to the City on January 8, 2008. You made the request by repeatedly telephoning the City and by appearing at the Mayor's office and asking for a copy of the record, a lease agreement between the City and a private entity. You allege that the fourth time on January 8 that you requested the record, the Mayor responded by indicating the record would be available within a few days. You received a copy of the lease agreement from the City on January 14, but the name of the entity with whom the City entered the agreement was redacted. The City did not provide an indication as to the statutory authority allowing redaction of the entity's name. You filed this complaint on January 14, alleging denial of access.

I sent a copy of your complaint to the City and provided an opportunity for the City to respond, but I have not received a response to the complaint.

#### ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any

person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by telephone or in person and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c).

The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. Past public access counselors have addressed this issue on several occasions. I recently addressed the issue in *Opinion of the Public Access Counselor 07-FC-249*, finding five weeks was not an unreasonable period of time for the Marion County Election Board to produce records pursuant to a request.

Here the City received your request initially in the early afternoon of January 8, and the Mayor responded to your request later that day. You seem to indicate that the City's refusal to provide the record to you on demand was a violation of the APRA. Indeed it was not. There is no timeframe for production of records provided in the APRA, but this office has said the production must be made in a reasonable amount of time. It is my opinion the City did not violate the APRA by providing you the record six days after your request.

Regarding the redaction of the entity's name from the lease agreement, the City may only deny access to a record when an exception to disclosure applies. I.C. § 5-14-3-3. Further, the agency bears the burden of proof to sustain denial of access. I.C. § 5-14-3-9(f). The City should have provided you with statutory authority allowing it to redact the name of the entity involved in the lease agreement.

## CONCLUSION

For the foregoing reasons, it is my opinion the City violated the Access to Public Records Act when it redacted information from a lease agreement with no indication why the information was redacted.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive, flowing style.

Heather Willis Neal  
Public Access Counselor

cc: Dan Terrell, Mayor, City of Mitchell