

February 18, 2008

Dave Saviola
8600 Maple Avenue
Gary, Indiana 46403

Re: Formal Complaint 08-FC-41; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Saviola:

This advisory opinion is in response to your formal complaint alleging the City of Gary ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. The City's response is enclosed for your reference. It is my opinion the City did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that you submitted a request for access to inspect records of the Gary Board of Works. You allege you faxed the request to the City on January 10, 2008. Receiving no response, you sent the request again on January 14. You filed this complaint on January 22, indicating you had not yet received a response.

The City responded to your complaint by letter dated February 6 from Assistant City Attorney Susan Severtson. Ms. Severtson contends the City has no record of receiving your request and as such could not respond. Ms. Severtson indicated that the City intends to respond to your request upon receipt of a copy of the request from this office. After our office obtained and sent copies of the request to Ms. Severtson, she sent to us a copy of a memorandum her office sent to the Public Works Director, instructing the department to prepare the requested records.

ANALYSIS

The public policy of the APRA states, "(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." Ind. Code § 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 mail or facsimile, the agency must respond to the request within seven days of receipt. I.C. § 5-14-3-9(b).

Here the City's office asserts it did not receive your request. If the City did receive your request, it would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the City did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Susan Severtson, City of Gary