



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 25, 2009

Mr. Murray Miller
2015 W. Western Ave.
Suite 140
South Bend, IN 46619

Re: Formal Complaint 09-FC-255; Alleged Violation of the Access to Public Records Act by the City of South Bend Department of Transportation

Dear Mr. Miller:

This advisory opinion is in response to your formal complaint alleging the City of South Bend Department of Transportation ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that the City did not violate the APRA.

BACKGROUND

In your complaint, you allege that the City denied you access to the "South Bend street paving and repair schedule for the last five years or as far back as the records go." You enclosed a letter from Assistant City Attorney Thomas L. Bodnar dated October 20, 2009. In that letter, which is addressed to you, Mr. Bodnar writes that he enclosed the list of street pavements for the year 2009, which was a partial response to your records request. Mr. Bodnar also noted the following:

As I explained on the phone, a previous employee was responsible for compiling this information for previous years and we have so far been unable to locate the information. We are attempting to contact that employee to find out if there is a disk with the information or how it may have been filed. If need be, we will contact our own IT Department and have them check out her computer. I sincerely apologize for any inconvenience this causes you.

My office forwarded a copy of your complaint to the City. As of the date of this opinion, we have not received a response.

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. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The City does not contest that it is 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 records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

Based on Mr. Bodnar’s letter of October 20th, it is my opinion that the City has not denied your request for access to public records. If anything, you appear to allege that the City has failed to produce public records to you within a reasonable time. There are no prescribed timeframes when records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. To determine whether the agency has produced records within a reasonable timeframe, it is necessary to consider factors such as 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. Section 7 of the APRA requires a public agency 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 APRA I.C. § 5-14-3-7(c). Mr. Bodnar’s letter indicates that the City is working diligently to provide you with the records you have requested. In my opinion, the City has not acted unreasonably.

I note that public agencies are required to protect records from loss, alteration and destruction. I.C. § 5-14-3-7(a). If the records you seek have been lost or destroyed, the City may have been in violation of Section 7 of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Thomas L. Bodnar, City of South Bend