



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 15, 2009

Mr. Marcus D. Harden  
0187 Lincoln Quad  
Terre Haute, IN 47809

*Re: Formal Complaint 09-FC-279; Alleged Violation of the Access to Public Records Act by the City of Gary*

Dear Mr. Harden:

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 § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that the City violated the APRA.

## BACKGROUND

In your complaint, you allege that the City violated the APRA by refusing to provide personnel records and other public documents in response to your request. You further allege that you submitted a written request for such records in person on November 19, 2009, but as of November 30, 2009, the City had not responded in writing to your request.

## 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." I.C. § 5-14-3-1. The City 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 City's public records 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).

Under the APRA, if a request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A public agency may deny a *written* request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing

the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). If the City received your request but failed to respond in accordance with Section 9, the City violated the APRA. I encourage the City to respond to your request by either producing the requested records or respond to you in writing and cite an exception to the APRA that permits the City to withhold the records.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack  
Public Access Counselor

cc: Carl Jones