



# 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](http://www.IN.gov/pac)

August 2, 2010

Ms. Ayanna N. Wright  
2222 W. Ridge Road  
Gary, IN 46408

*Re: Formal Complaint 10-FC-155; Alleged Violation of the Access to Public Records Act by the City of Gary*

Dear Ms. Wright:

This advisory opinion is in response to your formal complaint alleging the City of Gary (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The City's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested a copy of certain records from the City on June 1, 2010. As of the date you filed your complaint on June 30, 2010, you had not received a response from the City.

In response to your complaint, the City does not dispute that it failed to respond to your request. The City cites to budget and personnel cuts that have strained its resources and prevented it from responding to requests as quickly as it otherwise would. However, the City claims that it is willing to make all requested records available for your review. In fact, the City has already provided you with access (or the means to access) to the records, with the exception of the 2010 CAPER report that has not yet been created.

## 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 does not dispute 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 City's public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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 and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the 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 response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the City failed to respond to your written request within seven (7) days, the City violated section 9 of the APRA.

I understand that the City has now made available to you all requested records that the City maintains. I trust the City's disclosure of the records it maintains resolves your complaint. With regard to the 2010 CAPER report that the City has not provided to you because it is not yet created, nothing in the APRA requires a public agency to create a record in response to a request. *See Opinion of the Public Access Counselor 10-FC-56* ("Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.")

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the City failed to respond to your written request within seven (7) days of receipt, the City violated subsection 9(b) of the APRA. If the City has now made available to you all records maintained by the City, the City has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Susan M. Severtson