



STATE OF INDIANA

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April 16, 2010

Mr. Marcus D. Harden
0187 Lincoln Quad
Terre Haute, IN 47089

Re: Formal Complaint 10-FC-70; Alleged Violation of the Access to Public Records Act by the Gary Public Transportation Corporation

Dear Mr. Harden:

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

BACKGROUND

According to your complaint, you have requested various records from the Corporation. The Corporation initially verbally denied your request because you refused to provide it with your reason for seeking the records. You later made two written requests to the Corporation for which you received no response.

My office forwarded a copy of your complaint to the Corporation. Daryl E. Lampkins, general manager for the Corporation, responded to your complaint by saying that he has contacted you and informed you that the Corporation has compiled responsive records and that you can pick them up at your convenience. Mr. Lampkins further responds by stating that the Corporation staff misunderstood your request and believed that the requesting records did not fall under the APRA. After Mr. Lampkins reviewed the request himself, he determined that the records could be released to you.

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 Corporation does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Corporation’s public records during regular business hours unless the public records are excepted from disclosure as 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 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, you state that the Corporation responded to your initial verbal request but failed to respond to your written requests. A public agency is not obligated to respond repeatedly to identical requests, but if the Corporation failed to respond to a written request that was distinguishable from your initial verbal request, in my opinion the Corporation failed to comply with section 9 of the APRA.

In any event, the Corporation has admitted that it initially denied your request in error, which is a violation of section 3 of the APRA. It is my understanding that the Corporation has now prepared all responsive records for you to pick up at your convenience. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Corporation violated the APRA by failing to produce disclosable records to you in response to your initial request. I appreciate the Corporation’s willingness to acknowledge its error and make the records available to you on its own initiative.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Daryl E. Lampkins