



STATE OF INDIANA

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May 6, 2010

Mr. Bob Gasich
2202 Divac Dr.
Scherverville, IN 46375

Re: Formal Complaint 10-FC-86; Alleged Violation of the Access to Public Records Act by the East Chicago Redevelopment Commission

Dear Mr. Gasich:

This advisory opinion is in response to your formal complaint alleging the East Chicago Redevelopment Commission (the "Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the Commission's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that you sent two records requests to the Commission, but the Commission failed to respond to either request within seven (7) days as required by the APRA. In your request, you requested three things: (1) addresses and tax IDs of all parcels purchased by the City of East Chicago and/or Department of Redevelopment for N. Main and Broadway; (2) the purchase price of each parcel and date acquired; and (3) the cost paid for each parcel, including legal fees and closing costs.

My office forwarded a copy of your complaint to the Commission for a response. Kathryn D. Schmidt, attorney for the Commission, responded on its behalf. Ms. Schmidt argues that your request did not seek documents or records, but information. As such, the Commission did not violate the APRA because the APRA only requires public agencies to produce records. Ms. Schmidt also enclosed a letter dated July 24, 2009, in which John D. Artis, executive director for the Commission, responded to a request from you dated July 21, 2009. In that response, Mr. Artis explains that you requested information rather than documents and informed you that the APRA "applies to existing records and an agency does not have to create records for a response."

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 Commission 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 Commission’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).

You allege that the Commission violated the APRA by failing to respond to your requests within seven (7) days. 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, it is unclear whether or not the Commission responded to Mr. Gasich’s requests. Ms. Schmidt enclosed a letter that she claims was “sent to Mr. Gasich upon receipt of his March 23, 2010 request for documents.” [Response at 1]. However, the enclosed letter is dated July 24, 2009, so it appears to be in response to an earlier request from you in 2009. If the Commission’s response enclosing that letter was sent to you within seven (7) days of your March 23, 2010, request, the Commission did not violate the APRA. Moreover, if your March 23rd request is identical to the request you made in 2009, it might not have been necessary for the Commission to issue a duplicative response to a duplicative request.

In any event, in my opinion the Commission did not violate the APRA by failing to produce records in response to your request because it appears you were indeed seeking information rather than records. The APRA requires that requests for access to public records “identify with reasonable particularity the *record* being requested...” I.C. § 5-14-3-3(a)(1) (emphasis added). Moreover, nothing in the APRA requires a public agency to create records in response to a request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Commission failed to respond to a non-duplicate request within seven (7) days, the Commission violated section 9 of the APRA. However, it is my opinion that the Commission has not

otherwise violated the APRA because your request sought information rather than records.

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: Kathryn D. Schmidt