



STATE OF INDIANA

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February 4, 2011

Ms. Rebecca L. Wyatt
363 S. Lake St.
Gary, IN 46403

*Re: Formal Complaint 11-FC-10; Alleged Violation of the Access to
Public Records Act by the Gary Sanitary District*

Dear Ms. Wyatt:

This advisory opinion is in response to your formal complaint alleging the Gary Sanitary District ("District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. My office forwarded a copy of your complaint to the District, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that on October 22, 2010, you sent a records request to the District. In it, you sought access to a copy of the request for proposals for trash pick up and disposal in the City of Gary, a copy of the most recent contract between the District and Allied Waste for trash service, and copies of the invoices from Allied Waste to the District from January 2010 to the present. When you did not hear back from the District, you contacted the office on November 15, 2010, via telephone and left a message for the District's director. You did not receive a return call. On December 6th, you sent a letter via facsimile to the District enclosing a second copy of your October 22nd request. You did not receive a response to that request either.

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 District does not contest that it is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2.

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). 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. Thus, if the District failed to respond to your December 6, 2010, facsimiled request within seven days of receiving it, the APRA deems it denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the District's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the District, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the District has not provided a justification for withholding the records at issue here, it is my opinion that the District has failed to sustain its burden.

If the District cannot justify withholding the records under the APRA, I encourage the District to release the records to you as soon as possible. To the extent the District persists in its denial of access following the issuance of an advisory opinion from this office and you believe the District to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the District violated the APRA if it failed to respond to your request within seven days. I encourage the District to either release the requested records to you or cite to a provision in the APRA that justifies the District's failure to do so.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Rinzer Williams