



STATE OF INDIANA

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December 17, 2014

Ms. Dana L. Kurtz, Esq.
32 Blaine St.
Hinsdale, IL 60521

Re: Formal Complaint 14-FC-287; Alleged Violation of the Access to Public Records Act by the City of Hammond

Dear Ms. Kurtz,

This advisory opinion is in response to your formal complaint alleging the City of Hammond ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Mr. Robert J. Feldt, Esq. The City's response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 24, 2014.

BACKGROUND

Your complaint dated November 24, 2014, alleges the City of Hammond violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about October 10, 2014, you submitted a public records request to the City seeking "All 911 audio tapes, audio recordings, video, CAD data relating to the 9/24/14 traffic stop" of two named individuals. The City has not acknowledged your request. Additionally, you argue that the information requested does not constitute investigatory records for the purposes of denying the request, should such an exception to disclosure be argued.

The City responded claiming the request was properly denied and the records would be withheld under the investigatory records exception.

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.” See Ind. Code § 5-14-3-1. The City of Hammond is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Procedurally, a public agency may deny a request for records if the denial is in writing and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and the name and the title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(d). It does not appear a written denial was issued to you. As such it is a de facto violation of the APRA.

Furthermore, your complaint presupposes that the denial would have claimed the investigatory records exception to disclosure. The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. See Ind. Code § 5-14-3-4(b)(1). An investigatory record is “information compiled in the course of the investigation of a crime.” Ind. Code § 5-14-3-2(h).

While law enforcement agencies are afforded this broad discretion, I have often cautioned that the exceptions to the APRA should be used judiciously. Just because an exception is available does not mean it must be exercised. Law enforcement must weigh whether use of the exception serves to protect the integrity of an investigation or preserve an element of public safety. I advise the City to revisit the issue in the light of transparency and access.

Because your complaint was filed after the 30-day statutory window had elapsed for filing a formal complaint with this Office, I cannot make a conclusive determination. See Ind. Code § 5-14-5-7. This Opinion is for advisory and educational purposes only and it is my sincere hope the City reexamines its policy on investigatory records to ensure standards of openness and public access.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Robert J. Feldt, Esq.