



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

February 2, 2015

Mr. Kenneth Davidson
7407 Montana Avenue
Hammond, IN 46232

*Re: Formal Complaint 14-FC-317 (Consolidated): Alleged Violation of the
Access to Public Records Act by the Gary Sanitary District*

Dear Mr. Davidson,

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.* The District has provided a response to your complaint via Mr. Jewell Harris, Esq., which is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on December 19, 22 and 29, 2014.

BACKGROUND

Your first complaint dated December 19, 2014 alleges the Gary Sanitary District violated the Access to Public Records Act by failing to provide records in a timely manner. On or about December 15, 2014 you made an in-person request to the District's attorney for a contract. You had not heard a response at the time of the filing of your complaint on December 19, 2014.

Your second complaint dated December 22, 2014 alleges the Gary Sanitary District violated the Access to Public Records Act by denying you entrance to their physical premises for the purpose of making a records request. You have also been unable to connect via telephone.

Your third complaint dated December 29, 2014 alleges you finally received a return call in relation to your second complaint and were direct to the 'payment office' of the Gary Sanitary District. However, once you arrived at the payment office you were told the location does not receive public records access requests.

The District responded to your complaint on January 20, 2015. In their response, the District argues that the District executive director made a timely acknowledgement of your December 15, 2014 complaint and produced the records within a reasonable time.

In regard to your second and third complaints, the District argues you were met by a security guard at the premises and turned away because you did not state the reason for your visit as wanting to inspect public records. Arrangements were eventually made on January 5, 2015 for inspection.

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 Gary Sanitation District 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 District’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).

You have confirmed you were able to inspect the records related to your first complaint; therefore, that particular issue will not be addressed. It appears as if the records were generated to you within a reasonable time. If the District’s response to your request was unsatisfactory in any way, you may renew your complaint based upon any exception you take with the production. As the inspection took place after the filing of your complaint, you would need to file a new grievance.

The second and third complaint(s) are more troublesome. You were unable to gain access to the premises in order to make a complaint. Complicating the issue was the exchange between the onsite guard and yourself. It is unclear if you would have been granted entrance had you identified yourself as seeking records. And there is certainly no issue with maintaining security protocols to protect the premises and staff therein. However, an integral part of any public agency is the responsibility of transparency and access. Given the difficulty you experienced in gaining entry to the facility, as well as difficulty reaching someone by phone, it is my recommendation the District implement a process by which interested members of the public may make records requests. In the absence of a traditional reception area, there should be a consistent and conspicuous policy outlining the procedures by which a public records request can be made. Otherwise, it is up to the public to guess how to do so. I encourage the District to update their protocol accordingly.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jewell Harris, Jr., Esq.