



# 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](http://www.IN.gov/pac)

April 2, 2014

Mr. Richard B. Brown  
6434 Quail Creek Blvd.  
Indianapolis, IN 46237

*Re: Formal Complaint 14-FC-40; Alleged Violation of the Access to Public Records Act by the City of Valparaiso*

Dear Mr. Brown,

This advisory opinion is in response to your formal complaint alleging the City of Valparaiso ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has not provided a response despite an invitation to do so on March 6, 2014. 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 March 4, 2014.

## **BACKGROUND**

Your complaint dated March 4, 2014 alleges the City of Valparaiso 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 March 3, 2014, you emailed a public records request to the City's Reclamation Water Department seeking records related to the Department's "Significant Industrial Users". The City acknowledged your complaint the same day and stated your request must be in writing (as opposed to an email) and must include your signature.

## **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 Valparaiso 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.

The City is correct in that a request be, at the discretion of the agency, in writing on or in a form provided by the agency. See Ind. Code § 5-14-3-3(a)(2), however, there is no provision in the APRA which would compel a requestor of public records to affix a signature to the request. Consider the following language from *the Opinion of the Public Access Counselor 07-FC-257*:

...a public agency may not deny or interfere with the exercise of the right to records under the APRA. I.C. §5-14-3-3(b). Although it is true that no provision of the APRA specifically prohibits a public agency from requiring a person to sign an acknowledgement, there is no provision permitting this practice as a condition for receiving records. Because the public policy of the APRA places the burden of proof for the denial of a record on the public agency, the public agency would have to sustain its denial of records when a person refuses to sign the acknowledgement. In the absence of a specific statute allowing such a condition to be placed on the receipt of records, the agency would be unable to sustain the denial. See I.C. §5-14-3-1. The agency violated the Access to Public Records Act if the acknowledgement was required in order to receive the records.

Nothing in the APRA prohibits a public agency from asking a person to sign an acknowledgement, but the public agency may not withhold the records if the person refuses to sign the acknowledgement. If the public agency needs to document records were made available or disclosed on a certain date and time, the agency is free to make a simultaneous notation in its files which should meet the public agency's need for verification at a later date. *Opinion of the Public Access Counselor 06-FC-210*. While an agency may prescribe a form for the request of records, an agency may not deny access to records because the requester refuses to sign an acknowledgement indicating he or she has received the records.<sup>1</sup>

I see no reason to deviate from Counselor O'Neal's analysis. A public agency may take measures to ensure all public records requests are received and processed in an orderly manner, I fail to see how a signature would further than goal.

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<sup>1</sup> Please note this would be different for the judiciary, as they do have a specific Administrative Rule governing the management of their court records. See *13-FC-50*.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the City of Valparaiso has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor