



STATE OF INDIANA

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December 16, 2016

Mr. Richard J. Herber
3901 N. Washington Rd.
Fort Wayne, Indiana 46804

Re: Formal Complaint 16-FC-297; Alleged Violation of the Access to Public Records Act by the City of LaPorte

Dear Mr. Herber:

This advisory opinion is in response to your formal complaint alleging the City of LaPorte ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. The City has responded via City Attorney, Ms. Rebecca McCuaig, Esq. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 5, 2016.

BACKGROUND

Your complaint dated December 5, 2016, alleges the City of LaPorte has violated the APRA by not acknowledging your record request by providing you with documents requested. You sent a record request dated November 15, 2016 and November 16, 2016, requesting court records and filings of lawsuits which property owners have filed against LaPorte Historic Preservation Commission, LaPorte City Council and the City of LaPorte.

Your request appeared to be acknowledged the following day indicating the records would be gathered and produced when they are compiled. After a conversation on November 28, 2016, the City sent you a denial letter on December 5, 2016 directing you to LaPorte County Courts, as they are the custodian of the record. Other records specific to an individual were forwarded to you as well.

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 Indiana Code § 5-14-3-1*. The City of LaPorte is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the City's disclosable public records during

regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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.

You indicated the City Attorney did not acknowledge your request within seven (7) days, however, your records request was submitted to the President of the LaPorte Historic Preservation Society, who did respond in a timely manner. There is no indication you are being “blocked” from any records as you state in your complaint. Additionally, you reference yourself as a plaintiff in a Federal lawsuit. Please be advised the most appropriate and efficient manner of obtaining records germane to a lawsuit is through the judiciary’s discovery mechanisms. In this case, it would be a third-party request for production. I encourage you to utilize those avenues in lieu of a public records request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of LaPorte has not 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

Cc: Ms. Rebecca McCuaig, Esq.