



STATE OF INDIANA

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May 5, 2016

Mr. Robert Garcia
3733 Parish Avenue
East Chicago, Indiana 46312

Re: Formal Complaint 16-FC-68; Alleged Violation of the Access to Public Records Act by the City of East Chicago

Dear Mr. Garcia:

This advisory opinion is in response to your formal complaint alleging the City of East Chicago ("City"); Mr. Valerino Gomez, City Controller and Mayor Anthony Copeland violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The City has responded via Mr. Joe Allegretti, Esq. His 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 March 22, 2016.

BACKGROUND

Your complaint dated March 15, 2016, alleges the City of East Chicago violated the Access to Public Records Act by improperly denying your records request.

On January 25, 2016 you requested a listing of all city consultants for 2015, contracts for three (3) city employees and the salary for two (2) individuals. You renewed your request on February 11 and February 25, 2016.

On March 29, 2016 the City responded. The City states your request is for information rather than records. The City notes it has records which may be responsive to your request, but it does not know which documents to provide. The City state it has documentation waiting for you to inspect and you have failed to appear at the Office of the Controller to do so.

DISCUSSION

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 East

Chicago 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 disclosable 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 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.

Typically, it is the practice of local government branches to freely share information for the good of the municipality. Politics notwithstanding, your official capacity as a member of the legislative body of the City should entitle you to somewhat greater access to information from the executive branch. Nonetheless, it appears as if you are having difficulty obtaining documentation from the Mayor's Office and the City Controller.

With the exception of the first set of documents, the records you seek are fairly particular. Contracts and salary documentation are tangible records which can be produced without too much trouble. It is unclear whether the City maintains an actual list of contractors. Unless taken upon itself to do so, a public agency does not have to create a record – such as a list – to satisfy a public records request. Contracts and salary documentation, however, is pretty straightforward. To the extent the salary documentation has sensitive confidential information, it may be redacted, or alternatively released to another public agency which would also be obligated to maintain confidentiality. *See Ind. Code § 5-14-3-6.5*.

In regard to the latter two set of documents, my recommendation is for the City to make best efforts to provide you with the records you seek. If they do not maintain a list of contractors, however, they do not have to create one to satisfy a mere request for information.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Valerino Gomez, City Controller
Mr. Joseph Allegretti, Corporation Counsel