



STATE OF INDIANA

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October 27, 2026

Re: Complaint 26-FC-213
Gary Allison (Complainant) v.
City of South Bend Legal Department (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed April 22, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on May 11, 2026, requesting a formal response by June 9, 2026. A formal response was submitted by Sandra Kennedy, Corporation Counsel, on behalf of Respondent on June 9, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide copies of the requested records.

ANALYSIS

The public policy of 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.” Indiana Code (IC) 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

Complainant filed an Access to Public Records (APRA) request on March 10, 2026 seeking:

- 1) A list of violations for 3402 Sorin St, South Bend for the months of July 2024 through August 2024. He noted he sought a list of violations from the Department of Neighborhood Services and Enforcement (NSE) and other documents from the Building Department.

- 2) Violations and rectification of the horrendous smell coming from the development at or around the address on July 27, 2024.

The request was forwarded to the South Bend Neighborhood Services and Enforcement Department (NSED) and the South Bend Building Department (SBBD). Respondent submitted a response to Complainant on May 1, 2026, stating that neither the NSED nor the SBBD had any records responsive to the request.

Complainant filed multiple rebuttals and Respondent submitted multiple affirmations that no records existed. The issue appears to be a lack of clarity in the APRA request and what was actually being sought.

The APRA request as cited above was a request for violations attributed to a certain property and noxious odors emanating from the same. The complaint references internal correspondence and engineering reports regarding the Thrive/McKinley Terrace Improvement Project for July and August.

This office determines that the APRA request and complaint are not consistent for purposes of our opinion. We then look to the actual language of the APRA request to determine that the records sought were violations reported at the address and not a request for correspondence or engineering reports, as stated in the complaint.

Respondent researched the request as submitted and determined that no records of violations existed. The failure to produce a nonexistent public record is not a denial under the APRA. *Opinion of the Public Access Counselor 01-FC-61*. If a public agency does not maintain any records responsive to a public records request, the agency does not violate the APRA by denying the request. *Opinion of the Public Access Counselor 12-FC-09*.

This office determines that Respondent did not have to produce records that did not exist. Respondent has requested that Complainant submit a new request for the records it alleges to have requested. To date, Complainant has refused.

CONCLUSION

This office finds that the Respondent did not violate APRA as alleged in the complaint.

A handwritten signature in black ink, appearing to read "Brittney A. Long", with a stylized flourish at the end.

Brittney A. Long
Public Access Counselor