



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

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

October 17, 2008

Randal Phelix
7575 State Road 60 West
Mitchell, Indiana 47446

Re: Formal Complaint 08-FC-216; Alleged Violation of the Access to Public Records Act by the City of Mitchell

Dear Mr. Phelix:

This advisory opinion is in response to your formal complaint alleging the City of Mitchell ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The City's response to the complaint is enclosed for your reference. It is my opinion the City did not violate the APRA unless the City did not initially respond to your request within twenty-four hours of your appearance at the mayor's office.

BACKGROUND

You filed a complaint on October 8, 2008, alleging that on September 16 you appeared at the mayor's office and requested a copy of the audio recorded minutes of the March 10, 2008 police pension board meeting. You contend the meeting was required to have been recorded pursuant to I.C. § 36-8-8-12.7. You allege that the City failed to respond to the request.

The City responded to the complaint by letter dated October 10 from attorney William Mullis. The City contends that the March 10 hearing was recorded by the police chief and that the recording remained in his custody after he resigned in July 2008. The City contends that the mayor did not deny you access to the recording at the time of your request. Mr. Mullis contends that he was on an overseas vacation at the time of your request but that when he returned he contacted the former chief to obtain the recording. Mr. Mullis contends the former chief gave him a compact disc but the disc did not contain the recording. Mr. Mullis further contends that when he finally received a copy of the recording, he provided a copy to you. Mr. Mullis provides a copy of a receipt dated October 10, signed by you, indicating you have received a copy of the recording.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is made in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). This office has said twenty-four hours means twenty-four business hours, or the same time the next day. *See Opinion of the Public Access Counselor 00-FC-28.*

Here you appeared at the mayor's office on September 16 to request access to the recording. It is unclear whether the office responded to your request at that time. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. I do not have enough information to determine whether the City responded to your request within the required twenty-four hour period.

The City has now provided you with a copy of the recording, so I cannot find that the agency has denied you access to the record in violation of the Access to Public Records Act.

I would note to the City, though, that it is the City's duty to retain records of the City pursuant to Indiana's records retention laws. *See* I.C. 5-15. Further, the APRA requires an agency to protect records from loss, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). In my opinion the City cannot fulfill this duty if former employees are allowed to keep custody of public records while no longer in the employ of the City. I encourage the City to take care to protect its public records by keeping those records in control of City employees, officials, or contractors.

CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the APRA unless the City did not initially respond to your request within twenty-four hours of your appearance at the mayor's office.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: William Mullis
Mayor Dan Terrell, City of Mitchell