



STATE OF INDIANA

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February 18, 2009

Dorothy Snyder
236 East Pendle Street
Roseland, Indiana 46637

Re: Formal Complaint 09-FC-50; Alleged Violation of the Access to Public Records Act by the City of South Bend Parks and Recreation Department

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the City of South Bend Parks and Recreation Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. In my opinion the Department has violated the APRA if it received your request and did not respond to the request within seven days.

BACKGROUND

You filed the present complaint on February 11, 2009. You allege that on February 2 you sent by facsimile transmission to the Martin Luther King, Jr. Recreation Center ("Center") a request for access to records maintained by the Center. The Center is operated by the Department. You allege you have received no response as of the date of filing this complaint. You requested priority status for the complaint, alleging that you need the records for a proceeding before another agency, namely a hearing set for February 19. Pursuant to 62 IAC 1-1-3, priority status has been granted.

My office sent a copy of the complaint to the Center and invited the Center to respond, but to date my office has not received a response to the complaint.

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 Department 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 Department 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 delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

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.

You submitted the request to the Department on February 2. Pursuant to the APRA, the Department should have responded to the request within seven days, or by February 9. If the Department (or Center, which is operated by the Department) received your request and did not respond within the prescribed timeframes, the Department violated the APRA by denying you access to public records. On the other hand, if the Department did not receive the request, it did not violate the APRA. I do not find the name or fax number you used listed anywhere on the South Bend Parks and Recreation Department website (www.sbpark.org).

You marked the box on the complaint form to indicate an alleged Open Door Law violation as well, but you make no allegations regarding any meetings held by the agency. As such, I cannot make a determination regarding any alleged Open Door Law violations.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA if it received your request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: City of South Bend Parks and Recreation Department