



STATE OF INDIANA

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March 19, 2009

Michael Havison
1506 Galapagos Drive
Fort Wayne, Indiana 46814

Re: Formal Complaint 09-FC-59; Alleged Violation of the Access to Public Records Act by the City of New Haven

Dear Mr. Havison:

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

BACKGROUND

You allege that on or about January 9, 2009 you sent to the City a request for access to a number of records. You allege that as of the date of your complaint you have not received a response from the City. Your complaint was postmarked on February 13, and my office received it on February 19.

My office sent a copy of the complaint to the City and invited the City to respond. 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 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 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). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

If the City received your mailed request, the City had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). If the office failed to do so, the agency violated the APRA. I would note that it is clear from the materials you have submitted you have attempted to obtain the requested materials through the discovery process as well. As you know, previous public access counselors have opined that no language in the Trial Rules prohibits a party in litigation from making a public record request under the APRA. See *Opinion of the Public Access Counselor 02-FC-38* and *05-FC-169*. I agree with that opinion. The City should have responded to your request.

CONCLUSION

For the foregoing reasons, it is my opinion the City 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: Andrea Ladig, City of New Haven Clerk