



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

May 18, 2015

Mr. Robert G. Pope
604 Seagraves Avenue
Kendallville, IN 46255

Re: Formal Complaint 15-FC-131; Alleged Violation of the Access to Public Records Act by the City of Kendallville

Dear Mr. Pope,

This advisory opinion is in response to your formal complaint alleging the City of Kendallville ("City") has violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has issued a response via Mr. Douglas Atz, 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 April 15, 2015.

BACKGROUND

Your complaint dated April 8, 2015 alleges the City of Kendallville violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On April 6, 2015, you submitted to the City a public records request seeking numerous public records, including personnel files, meeting notices and minutes, and police department records, among many other records.

The City responded to the complaint in writing on April 21, 2015; however, counsel for the City asserts he spoke to you on April 10, 2015 informing you of the City's intention to comply with the records request.

On April 23, 2015, counsel sent a communication to you requesting clarification of your request, which you provided. You filed your formal complaint before acknowledgement of the complaint, but subsequent information provided by the City indicates the City's willingness to work with you in satisfying your request.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Kendallville is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the City’s 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 in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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.

The only possible technical violation of the APRA is the failure to acknowledge your request within twenty-four (24) hours. This provision is in place so in-person requesters can be satisfied knowing their request has been received. Failure to acknowledge a request can be deemed a denial if not done within twenty-four (24) hours. The acknowledgement does not have to be in writing. What is not clear from your complaint, however, is if anyone from the City simultaneously acknowledged your request at the time of delivery. This is all that is needed to satisfy the twenty-four (24) hour obligation. From the subsequent materials provided, however, it is apparent the City has the intention of working with you to provide the information you seek. If there are any issues with this matter going forward, please do not hesitate to contact this Office.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish at the end.

Luke H. Britt
Public Access Counselor

Cc: Mr. Douglas Atz, Esq.