



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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November 9, 2015

Ms. Ayanna Wright
2222 West Ridge Road
Gary, Indiana 46408

Re: Formal Complaint 15-FC-266; Alleged Violation of the Access to Public Records Act by the City of Gary Law Department

Dear Ms. Wright:

This advisory opinion is in response to your formal complaint alleging the City of Gary Law Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint via Mr. Gregory L. Thomas, 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 September 28, 2015.

BACKGROUND

Your complaint dated September 28, 2015 alleges the City of Gary Law Department violated the Access to Public Records Act by failing to provide the documents you requested.

On August 28, 2015, you verbally requested to inspect all documentation related to the Shared Services Arrangement between the City of Gary ("City") and the Gary Sanitary District. You are specifically seeking information related to the movement of 14 AFSCME union members. You also provided written documentation of your request, which the City acknowledged on September 2, 2015. You contend the Department is taking an unreasonable amount of time to respond to your request.

You were informed on September 16, 2015 your request required input from several departments and that you would be informed of any status changes.

On October 26, 2015 the Department responded. The Department notes the protocol for requesting public records is to submit a written request. The City does not accept verbal requests. The Department also notes records were provided to you on October 19, 2015.



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ANALYSIS

The public policy of the 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.” See Ind. Code § 5-14-3-1. The City of Gary is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Department’s disclosable 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).

Your first issue is that you contend your verbal request was not acknowledged by the City. However, you were informed the City requires all records requests to be in writing. If there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed. See Ind. Code § 5-14-3-3(a)(2) and *Opinion of the Public Access Counselor 14-FC-51*. It appears as if the City made an exception and accepted your request.

You also contend the Director of Human Resources improperly forwarded your request to the Law Department as a method of delaying public access. However, this is not an attempt at denial but merely an established procedure. The City has an obligation to keep certain records confidential. Requesting the Law Department look at your request is not an attempt to deny access but an attempt by the City to ensure it remains in compliance with all applicable laws. That being said, this procedure should not result in an unreasonable delay.

Finally, you have requested a statement of what constitutes a reasonable time to provide records.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. In accordance with section 3(b) of the APRA, the public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how extensive the process is to gather and redact the records, and whether the records must be reviewed by counsel and redacted to delete nondisclosable



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material is necessary to determine whether the agency has produced records within a reasonable timeframe.

See *Opinion of the Public Access Counselor 13-FC-81*. In this circumstance, a time frame of six weeks is likely not necessarily unreasonable due to the open-ended nature of your request. There are often many moving parts to a complex public records request and public access under Indiana law is not immediate access. Efficiency and expediency are expected, but within the normal operations of a public agency.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Gary Law Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LHB", written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Gregory L. Thomas, Esq.