

July 18, 2002

Mr. Sherman Van Dyke, Sr.
3516 North Rural Street
Indianapolis, IN 46218

Re: Advisory Opinion 02-FC-26; Allegations of Violations of the Access to Public Records Act by the Office of the Mayor of the City of Indianapolis.

Dear Mr. Van Dyke:

This is in response to your formal complaint, which was received on June 28, 2002. You have alleged that the Office of the Mayor of the City of Indianapolis ("Mayor's Office") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records request dated June 13, 2002. Mr. Michael O'Connor, Chief Deputy Mayor and Chief of Staff, responded in writing to your complaint in a letter dated July 3, 2002. A copy of his response is enclosed for your reference. It is my opinion that the Mayor's Office denied access to public records under the APRA when it failed to respond to your public records requests within seven (7) days of the receipt of the request as required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, on June 13, 2002 you sent by facsimile a letter to Mr. O'Connor. In that letter, you requested "copies of written signed documents authorizing the Mayor's Office of Public Works to refuse to do as required by City Ordinance Sec. 575." In response to your complaint Mr. O'Connor provided copies of a June 21, 2002 letter from Mr. Robert A. Barnes, Deputy Director of Constituent Services in the Mayor's Office and a July 1, 2002 letter from Ms. Barbara Lawrence, Director of the Department of Public Works. In the June 21st letter Mr. Barnes acknowledged the receipt of your request and stated that "we are reviewing your request and expect to be in a position to respond in the near future." Ms. Lawrence in her July 1st letter addressed the substantive issue regarding the weed ordinance, however, did not address your public records request.

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." Ind. Code § 5-14-3-1. The Mayor's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Mayor's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under

Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Under the APRA, "if a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request." Ind. Code §5-14-3-9(b). It is the responsibility of the public agency to respond to requests for public records within this time period.

It is clear that the Mayor's Office was required to respond to your written request within seven (7) days after its receipt and that this was not done. Your letter was faxed to the Mayor's Office on June 13th and there has been no evidence to suggest that the request was not received on the 13th. Therefore, the Mayor's Office was obligated to respond to your request on or before June 20, 2002. Mr. Barnes' letter was dated June 21, 2002 beyond the seven (7) day time period. Therefore, under the facts presented, it is my opinion that the Mayor's Office failed to respond to your written request of June 13, 2002 within seven (7) days after receipt, which constituted a denial that is actionable under Indiana Code section 5-14-3-9.

With respect to the substance of the responses provided by Mr. Barnes and Ms. Lawrence, it is my opinion that those responses are inadequate under the APRA. While a response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. Here Mr. Barnes only stated that the request was being reviewed and that you could expect a response in the near future. While Ms. Lawrence in her letter only provided information regarding the weed ordinance and did not address your public records request. Therefore, it is my opinion that these responses fail to adequately respond to your public records request. It should be noted, however, that in his response to this Office Mr. O'Connor stated that the City has no records that are responsive to your request.

CONCLUSION

It is my opinion that the Mayor's Office failed to respond within the time period required under Indiana Code section 5-14-3-9(b) to your June 13, 2002 public records request, and that failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). Furthermore, it is my opinion that the letters concerning your request by Mr. Barnes and Ms. Lawrence do not adequately respond to your request for public records as required under the APRA.

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Mr. Michael O'Connor,
Chief Deputy Mayor and Chief of Staff