



# STATE OF INDIANA

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March 21, 2011

Ms. Lita M. Filippo  
7201 Locust Ave.  
Gary, IN 46403

*Re: Formal Complaint 11-FC-54; Alleged Violation of the Access to Public Records Act by the City of Gary*

Dear Ms. Filippo:

This advisory opinion is in response to your formal complaint alleging the City of Gary (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* City of Gary Corporation Counsel Susan Severtson's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that the City partially denied your records request, which you originally submitted on December 5, 2010. You followed up with the City on February 7, 2011, and submitted this complaint on February 20th after not receiving a satisfactory response. Your request sought access to various bids, contracts, and records related to insurance policies held by the City.

In response to your complaint, Ms. Severtson claims that the City has released some responsive records to you, but notes that your request did not contain specific years for which you seek contracts and other records. Moreover, the City has made some records available to you that you have not yet picked up.

## 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 a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City's public records

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).

Ms. Severtson states that the City has not denied you access to any of the records you requested. Further, she claims that the City has produced several responsive records that you have not yet picked up in spite of the City notifying you that they are available. Given that, it is difficult for me to analyze whether or not the City's most recent responses to your request are adequate. That said, Ms. Severtson notes in her response that the City does not maintain several of the records you requested. If that is the case, the City did violate the APRA by failing to produce those records. The APRA does not require public agencies to produce or release records that they do not maintain. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy...").

I trust that if you seek additional responsive records beyond those the City has already available to you, the City will release them for inspection and copying as soon as is practicable upon request. If the City denies such a request, the City must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c). To the extent that the City fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA if it has made all responsive records available to you for inspection and copying.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Susan M. Severtson