

March 26, 2008

Paul Jefferson  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

*Re: Formal Complaint 08-FC-70; Alleged Violation of the Access to Public Records Act by the City of East Chicago*

Dear Mr. Jefferson:

This is in response to your formal complaint alleging the City of East Chicago (“City”) violated the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3) by denying you access to records; specifically, you allege the City has not produced the records you requested in a reasonable period of time. It is my opinion the City has violated the APRA failing to provide you the requested records or otherwise communicate with you regarding the request since October 2, 2007.

#### BACKGROUND

In your complaint you allege that you submitted a request to the City dated September 28, 2007 for copies of a number of records related to lobbying efforts on behalf of the City; the requests are listed as items 1 through 5 in your request. You subsequently withdrew your request for item 5. The City responded to your request by letter dated October 2, indicating it would promptly review its files and prepare a response; the City further indicated it would contact you within ten days regarding the response. You have received no further communication from the City, despite your November 14, 2007 and January 30, 2008 letters seeking information or a status report. You filed this complaint on February 27, alleging denial of access.

I sent a copy of your complaint to the City and invited the City to provide a response; as of this date I have 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. 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). Previous public access counselors have stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, you submitted your request for access to records to the City on September 28, 2007. The City initially complied with the APRA by responding within seven days of receipt of the request. But the City's compliance ended there. In more than five months the City has not provided you with an update as to the status of the request, a partial production of the records requested, or even the courtesy of a response to your repeated requests for information relating to the status request. Further, the City did not provide any information following my invitation for a response to the complaint, so I cannot find the City has met its burden to show the time period for production of documents is reasonable under the circumstances.

## CONCLUSION

For the foregoing reasons, it is my opinion the City of East Chicago has violated the Access to Public Records Act.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive style with a large initial 'H'.

Heather Willis Neal  
Public Access Counselor

cc: Carmen Fernandez, Office of Corporation Counsel, City of East Chicago