



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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December 30, 2013

Mr. Victor H. Werner, Jr.
1408 Pleasant Hill
Logansport, IN 46947

Re: Formal Complaint 13-FC-336; Alleged Violation of the Access to Public Records Act by the City of Logansport

Dear Mr. Werner,

This advisory opinion is in response to your formal complaint alleging the City of Logansport ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. John Molitor, Esq., Counsel for the City, responded to your formal complaint. 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 December 9, 2013.

BACKGROUND

Your complaint dated December 9, 2013 alleges the City of Logansport violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

You allege you personally served on the City a request for several documents at 11:50 a.m., on December 4, 2013. On 11:50 a.m., on December 5, 2013, you placed a call to the City stating you had not been contacted. Your complaint regards the lapsing of the 24 hour deadline for public agencies to acknowledge a request pursuant to Ind. Code § 5-14-3-9(a).

In their response, the City has provided as an exhibit the form you completed on December 4, 2013. In the "Internal Use Only" portion of the document, it appears the form was indeed received at 11:50 a.m., but a response was not provided until 1:30 p.m., the next day, 25 hours and 40 minutes after your request.

The documents had not been produced at the time of your formal complaint; however, the City has provided at least some of them in its response. The remainder will be made available to you on or before January 2, 2014.

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 Logansport is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, 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.

By its own admission, you are correct the City failed to respond to your request within 24-hours of your in-person service. Technically, this is a violation of the letter of the APRA law because it took nearly 2 hours longer to acknowledge your request.

Similarly, I am confident traffic patrolmen on I-465 in Indianapolis regularly clock vehicles traveling 57 miles-per-hour in a 55 mile-per-hour speed zone. Indeed, this is a technical violation of the law, but rarely would such an infraction be enforced. If weather conditions were poor or if there were servicemen working on the roads near the infraction, I could postulate the offending speeder would be pulled over and perhaps given a citation. Likewise, if the information you have sought from the City was of immediate critical importance, I would also scrutinize the City’s actions more strictly. As it is, however, based on the information provided, I’m letting them off with a warning.

This is not to take lightly the crucial importance of disclosing public records in a timely fashion. In the same manner, I consider violations of the APRA to be especially detrimental to the public trust. But in this case I cannot consider the violation egregious. The Courts have spoken on similar Open Door Law issues and have used the term “substantial compliance”. While I refrain from adding that vernacular to APRA issues, this is as close as a public agency can come to being in substantial compliance with the law.

Please note this does not mean the City has 24-hours to *produce* your records. Their burden is to produce the records in a reasonable amount of time. See Ind. Code § 5-14-3-3(b). The 24-hour deadline is only to *acknowledge* your request.

The City should be mindful that public employees and agencies are to be held to the very highest standards of full compliance with open access and transparency laws. It is my sincere hope the City of Logansport will continue to uphold their obligations as servants of the people.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Logansport technically violated the strict letter of the Access to Public Records Act, however, that violation has since been remedied by the timely production of documents.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Molitor, Esq.