



# STATE OF INDIANA

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September 15, 2014

Mr. Roger A. Kunkel  
322 E. Washington St.  
P.O. Box 113  
New Richmond, IN 47967

*Re: Formal Complaint 14-FC-180; Alleged Violation of the Access to Public Records Act by the Town of New Richmond*

Dear Mr. Kunkel,

This advisory opinion is in response to your formal complaint alleging the Town of New Richmond ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Town has responded to your complaint via Town Clerk Kathy Sering. Her 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 August 18, 2014.

## BACKGROUND

Your complaint alleges the Town of New Richmond violated the Access to Public Records Act by delaying the production records responsive to your request. You also indicate an Open Door Law violation; however, you have not cited any particular allegation.

On or about May 30, 2014, you submitted a public records request to the Town seeking information related to a newly commissioned patrol car. As of the date of the filing of your complaint, you had not received an acknowledgement or any other production of documents from the Town.

The Town has responded arguing they never received your request and that the appropriate contact person for such information is the Town Marshal.

## ANALYSIS

The public policy of the APRA states that "a (p) roviding person 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 Town of New Richmond (“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 Town’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.

The Town alleges it never received your request and has not indicated it would deny the records if your request was properly received. I cannot determine with any amount of certainty if your request made it to the Town Clerk. If it did, a violation may have occurred. If not, there has not been a violation of the APRA. I encourage you to follow up your request with the Town Marshal.

It should be noted, however, that your request appears to be a series of questions and not a request for a specific document. If the answers to your questions have been documented in any way, it should be made available to you. If this information has not been memorialized in writing, it is not a public records request and is simply questions to a public official. This type of request would fall outside the APRA.

Please do not hesitate to contact me with any questions or concerns.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Kathy Sering