

June 16, 2003

Martin L. Hensley
15 Wood Street
Greenfield, IN 46140

Re: *Advisory Opinion 03-FC-39*: Alleged Denial of Access to Public Records by the City of Rushville, Rush County Area Plan Commission and the Rush County Board of Zoning Appeals.

Dear Mr. Hensley:

This is written in response to your formal complaint, which was received on May 23, 2003. You have alleged that the City of Rushville ("City") and the Rush County Area Plan Commission and Board of Zoning Appeals ("Commission" and "Board") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made identical public records requests to these public agencies on April 15, 2003 as part of a motion asking a court to require the agencies to produce various public records. You did not, however, receive any responses to your requests. Mr. Tracy Newhouse, City Attorney, responded on behalf of the City and a copy of his response is enclosed. Mr. David Butsch, Attorney for the Commission and Board also responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that due to the manner in which the April 15th requests were presented, the public agencies did not violate the APRA with respect to these requests.

BACKGROUND

According to your complaint, you sent a public records request to the City, Commission and Board on April 15, 2003 for copies of public records that had been requested by you in letters dated January 13 and 28, 2003. In those requests, you asked for:

1. Legal names and addresses of Board members.
2. Access to view and copy each lawsuit, decision, judgment or any complaint filed against the Board, Commission, City, Rush County or its agents.
3. Phone records for the Board, Commission and Mr. William Todd (Executive Director of the Commission).
4. Financial records including charges, posts, receipts for the Commission, Board and Mr. Todd.
5. Copies of any correspondence or record of any kind from Mr. Todd to or from a list of

individuals and entities (list excluded).

6. Any record held by the Board, Commission, City, or Rush County.

You did not receive a response from any of these entities concerning your request. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Newhouse stated that the only copy of your request for public records was attached to a Motion to Produce that was sent to the City as part of litigation you filed, so it was not perceived as a public records request. Mr. Newhouse indicated that he did respond to your Motion to Produce, and therefore, has responded under the APRA. In any event, Mr. Newhouse explained that the City does not have any public records responsive to your requests numbered 1 through 4. As to request numbered 5, Mr. Newhouse stated that without more specific time frames, the City could not determine if it has any records responsive to your request. Finally, as to your last request, numbered 6, Mr. Newhouse stated that it is not specific.

Mr. Butsch responded for the Board and the Commission and did not deny that these public agencies received your April 15th request. Mr. Butsch stated that except for your request numbered 1, you have failed to state your request with reasonable particularity, so it is impossible for his clients to comply with your requests unless you provide the names and dates under which these records are filed.

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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The City, Commission and Board are clearly public agencies 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 these entities 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).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you sent your request to the Board, Commission and City in care of their attorneys. Because you attached this request to a motion filed in litigation, I believe it is possible that the recipients did not understand that you were making a public records request. In fact, the content of the very motion you attached this request to asks the court to order the Commission, Board and City to produce public records. While typically it would be my opinion that a public agency is required to respond within seven (7) days of receipt, this applies to direct public records requests, not attachments to motions for a court to take action in a lawsuit. For these reasons, it is my opinion that the Commission, Board and City did not violate the APRA with respect to your April 15th request. In response to your formal complaint, however, Mr. Newhouse and Mr. Butsch have now provided direct responses to your request of April 15, 2003.

CONCLUSION

It is my opinion that, based upon the facts presented, the City of Rushville and Rush County Area Plan Commission and Rush County Board of Zoning Appeals' did not deny you access under Indiana Code section 5-14-3-9 of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Tracy Newhouse, City of Rushville
Mr. David Butsch, Rush County PC and BZA