

November 13, 2006

Chris L. Christy
22630 Lamong Road
Sheridan, IN 46069

Re: Formal Complaint 06-FC-173; Alleged Violation of the Access to Public Records Act by the Town of Sheridan

Dear Mr. Christy:

This is in response to your formal complaint alleging that Town of Sheridan (“Town”) violated the Access to Public Records Act by denying your request for copies of the water utility bill payment history for two customers. I find that the Town did not timely respond. In addition, the Town should have produced the records you requested in a timely manner.

BACKGROUND

You allege in your formal complaint that on October 5, 2006, you hand-delivered a written request for information pertaining to John Snethen and David Tudor’s water utility bill payment history for the previous twelve months. As of the date you sent your complaint, October 11, you had not been contacted.

On October 13, after I had sent a copy of your complaint to the Town, Clerk Treasurer Connie Pearson sent you a letter stating that she had not intended to deny your request, but that she is investigating the computer records of the accounts you wanted to see, and is determining what information you can or cannot be given, and how it may be prepared for you. Changes may be needed in the software in order to provide this information to you.

In Ms. Pearson’s October 30 letter to me in response to your complaint, she explained that the Town has anticipated that many similar requests for information will follow yours. If the Town was concerned only about your request, the Town could have provided the information before now. The Town is aware that the law does not permit it to share certain information included in the computer records. The Town is trying to determine the most appropriate way to

provide information to you while complying with the law, and learning if the prohibited information can be withheld by the software.

I telephoned you on November 8 to ask whether you had yet received the records concerning the water utility payment history of two individuals. You told me that you had not.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). There are no timeframes prescribed in the APRA for when records must be produced. This office has stated that the records should be produced within a reasonable period of time under the circumstances.

The Town has not identified what information contained in the Town’s computer records is not disclosable under the APRA. Your request certainly does not specify any information other than the utility payment history of two individuals, which presumably would include a date billed, the amount billed to the person, and the payment date and amount received. In addition, it is likely that a payment history would include certain personal information about the person, such as the person’s name, address, telephone number, and perhaps social security number.

The APRA prohibits a public agency from disclosing a social security number contained in the records of a public agency. IC 5-14-3-4(a)(12). In addition, the telephone number and address of a customer of a municipally owned utility may be withheld at the discretion of the public agency. IC 5-14-3-4(b)(20). Hence, if the computer-generated bills or payment history of utility customers contain the telephone number, address, or social security number, it is understandable that the utility would be determined to remove that information. It is also understandable that the Town would seek a way to do this efficiently so that if the Town were to receive many such requests in the future, it could quickly comply with those record requests.

Under the APRA, if a person requests a copy of information contained in a database on a disk, the public agency must make reasonable efforts to provide a copy of that information if the medium requested is compatible with the agency’s data storage system. IC 5-14-3-3(d). If the information stored on computer disk is partially disclosable and partially nondisclosable, the public may charge a person the agency’s direct cost of reprogramming a computer if the public agency is required to reprogram the computer to separate the disclosable information from nondisclosable information.

Nothing in your request for records specifies that you want the information electronically. Also, nothing in the Town's response suggests that the Town cannot print out a copy of the payment history for the two accounts and manually redact the social security number (if any), address, and telephone number from the printout and give it to you. The fact that the Town would like to develop a means to electronically extract nondisclosable data is not a sufficient reason to delay disclosure of this information to you, if it may be downloaded from the computer onto paper and manually redacted.

It is my opinion that the Town has failed to issue the response to your request within 24 hours, in violation of the APRA. In addition, it has been approximately five weeks since your request for the records. I find that with the information provided to me, this was an unreasonable period of time in which to retrieve and redact the records, if any part of the records must be redacted. The Town should disclose the records as soon as possible, and if it will redact any of the exempt information described above, the Town is required to identify in writing the exemption or exemptions that apply to the redacted material.

CONCLUSION

For the foregoing reasons, I find that the Town violated the Access to Public Records Act, and this denial is actionable under Indiana Code 5-14-3-9(e).

Sincerely,

Karen Davis
Public Access Counselor

cc: Connie Pearson