

January 22, 2007

Mr. Sam Shaw
627 H Street
Bedford, IN 47421

Re: Formal Complaint 06-FC-221; Alleged Violation of the Access to Public Records Act by the City of Bedford

Dear Mr. Shaw:

This is in response to your formal complaint alleging that the City of Bedford (“City”) violated the Access to Public Records Act when it refused to provide an exemption for the record you sought. I find that the City does not have any responsive records, and therefore has not denied you a record.

BACKGROUND

You complain that the City has not properly denied you a record in accordance with the Access to Public Records Act. Specifically, you state that the City has not provided, in writing, the exception authorizing the City to withhold the record and the name and title or position of the person responsible for the denial. You enclosed a photocopy of the request for a copy of the code enforcement ordinance regarding “junk.”

I sent a copy of your complaint to the City. The City sent a letter authored by City Attorney James G. Pittman. Mr. Pittman explained that you had requested a copy of the “junk ordinance” that was referred to in the Code Enforcement Officer’s job description. The City responded that the City has no “junk ordinance” but it does have an abandoned vehicle ordinance and garbage and refuse ordinance. You have already received these ordinances but you continued to insist on receiving the “junk ordinance.” Each time that you have requested this and certain other records, the City has told you that it did not maintain the records that you requested.

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 in person, the public agency is required to respond within 24 hours of receiving the request, or the request is deemed denied. IC 5-14-3-9(a). An agency is required to deny a written request for a record in a writing that states the exemption or exemptions that authorize the agency to withhold the public record, and the name and title or position of the person responsible for the denial of the record. IC 5-14-3-9(c).

A public agency is well-advised to make it clear to a person requesting a record whether or not the agency maintains the records that a person has requested. In this case, the City has averred that it has told you that it has no junk ordinance. You apparently believe that the reference in the employee’s job description establishes that such an ordinance must exist. The reference is apparently not accurate, or the City would surely provide the ordinance, just as it has provided its other, related ordinances.

The City has not failed to provide a written denial of the records because the City is not denying you a record. Rather, it does not have the record. Accordingly, I agree with the City that your allegations are entirely unfounded.

CONCLUSION

For the foregoing reasons, I find that the City of Bedford has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: James G. Pittman