

July 19, 2006

Sent Via Facsimile

Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, IN 46322

Re: Formal Complaint 06-FC-99; Alleged Violation of the Access to Public Records Act by the Highland Park and Recreation Board and Department

Dear Mr. Volbrecht:

This is in response to your formal complaint alleging that the Highland Park and Recreation Board and Highland Park and Recreation Department (collectively, "Board") violated the Access to Public Records Act by failing to give you a copy of a certificate of insurance because it was destroyed.

BACKGROUND

You had requested a copy of the proof of insurance for the food booth of the Lake Ridge Republican Women for the 4th of July Festival in Main Square Park in 2005. To obtain a copy of the proof of insurance certificate, the Board contacted Ms. Karen Ziants, food booth chairperson on the Advisory Council of Community Events ("ACCE") that serves as an advisory council to the Board pursuant to Indiana Code 36-10-3-17.

On June 13, 2006, Alex Brown, Superintendent of the Highland Park and Recreation Department told you that Ms. Ziants had informed him that she had discarded the certificates of insurance for the food booths for the 2005 event. Mr. Brown told you that he had told Ms. Ziants that she should, in the future, retain the certificates for at least two years. You filed your formal complaint alleging that this failure to provide the certificates, and Ms. Ziants' destruction of the certificates, was a violation of the Access to Public Records Act. You also take issue with the fact that the record was maintained by Ms. Ziants in her home.

I sent a copy of your complaint to the Board. The Board President Mr. Thomas Arnold responded by letter, a copy of which is enclosed for your reference. Mr. Arnold confirmed that Mr. Brown had counseled Ms. Ziants that she should not discard the proof of insurance certificates. Hence, you were informed on June 13 that the record was not available, and why.

Since the filing of your complaint, Mrs. Rose James, the chairperson of the food trailers, was able to locate a copy of the proof of insurance. Once the certificate was found on June 27, Mr. Brown informed you that you could claim a copy if you would contact him. You have since received a copy of the certificate.

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. Ind. Code 5-14-3-3(a). The Board is a public agency under the Access to Public Records Act. IC 5-14-3-2(1)(2)(C). "Public record" includes any material that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m). The Board has not disputed that the proof of insurance is a public record of the Board, although Ms. Ziants is not a member of the Board and neither the Board nor the Department had custody of the certificate prior to its destruction. Because the members of the ACCE maintain records on behalf of the Board and the Board requires that it be given access to the records for Board purposes, the records are public records under the Access to Public Records Act. See *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005).

A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). Public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. IC 5-14-3-4(e). Therefore, the copy of the certificate of insurance should not have been discarded except in accordance with a record retention schedule and in accordance with the procedures for destruction of records in IC 5-15. However, there is nothing in the law that strictly prohibits the Board from allowing records to be maintained in an ACCE member's home.

Another member of the ACCE was able to locate a duplicate record and the Board has now provided you with a copy of the record you requested. This was a fortuitous circumstance in that a duplicate was maintained by the Board after all. However, in the future, the Board should adhere to procedures that ensure that records are safeguarded in accordance with the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Highland Park and Recreation Board should ensure that its records are safeguarded in accordance with the Access to Public Records Act and Indiana Code 5-15.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Thomas Arnold