

March 11, 2008

Terry Burnworth  
Pyramid A/E & Const. Admin.  
5350 University Avenue  
Indianapolis, Indiana 46219

*Re: Formal Complaint 08-FC-56; Alleged Violation of the Access to Public Records Act by the Town of Avon Clerk-Treasurer*

Dear Mr. Burnworth:

This advisory opinion is in response to your formal complaint alleging the Town of Avon Clerk-Treasurer ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to completely fulfill your request for records; specifically, you allege the Clerk has not produced the records you request in a reasonable period of time. I have enclosed a copy of the Clerk's response to the complaint for your reference. It is my opinion the Clerk should produce all records you have identified with reasonable particularity. Further, it is my opinion that you should further clarify the requests for which the Clerk has requested further information or clarification.

#### BACKGROUND

In your complaint you allege that you submitted a request on December 17, 2007 to the Clerk. You requested 38 items, including meeting minutes, contracts, reports, and other records related to projects of the Town of Avon. You filed this complaint on February 14, 2008, alleging that as of that date you had received only 24% of the records. You allege the records have not been produced in a timely manner.

The Clerk responded to your complaint by letter dated March 3. She included an itemized list of each group of records requested and the status of production of those records. Regarding several of the records, the Clerk has sought clarification from you regarding the records. She contends that because she has not received clarification, she has been unable to further process the request. The Clerk indicates that she is the lone employee in her office and as such must respond to all requests herself in addition to her other duties. Further, the Clerk contends she was away from the office for one week in January due to a death in the family. The

Clerk also indicates she has enlisted the services of an intern to help produce records responsive to your requests.

The Clerk has provided copies of correspondence to you dated December 18, 2007 and January 18 and February 14 (2 letters), 2008 as evidence that she has been in communication with you regarding the status of your requests.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, your initial request was made on December 17, and the Clerk responded by letter dated December 18. The Clerk's response on December 18 was timely. Between your request

on December 17 and your complaint on February 14, the Clerk sent you two letters and produced some of the records requested. The Clerk contends, and provides evidence in the January 18 letter, that she sought clarification related to some of your requests, but you did not provide that clarification. I would urge you to provide that clarification so the Clerk may process those portions of your request.

It is my opinion the Clerk has demonstrated she is working to produce the documents you requested in a reasonable amount of time. She has provided a portion of the records to you as they have become available. The Clerk has indicated she is the lone employee in the office (until she has recently enlisted the services of an intern). As such, she cannot suspend all other duties to focus solely on your request. *See* I.C. § 5-14-3-7(a). Further, the Clerk was out of the office for one week due to a death in the family, which means no person was working on your request at that time.

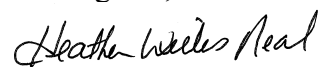
Your request seeks a large number of records, and considering that volume, it is not unreasonable to assume it would take some time for the Clerk to compile the requested records. I do not believe approximately eight weeks to be an unreasonable amount of time to find, review, and copy the number of records you requested, especially considering that at least three holidays and the Clerk's one-week absence occurred during those eight weeks.

This is not to say the Clerk is not obligated to produce the records. Pursuant to the APRA (*See* I.C. § 5-14-3-3) and previous opinions from this office, the Clerk must endeavor to provide the remaining records in a reasonable amount of time. It is my opinion the Clerk has demonstrated her intent to do so.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Town of Avon Clerk-Treasurer has not violated the APRA but should produce the records you requested as soon as is reasonable and practical.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Sharon Howell, Town of Avon Clerk-Treasurer