



STATE OF INDIANA

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November 2, 2009

Ms. Nancy Garbrecht
6170 Joliet Road, Suite 200
Countryside, IL 60525

*Re: Formal Complaint 09-FC-224; Alleged Violation of the Access to
Public Records Act by the Town of DeMotte*

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging that the Town of DeMotte (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that the Town did not violate the APRA.

BACKGROUND

In your complaint, you allege that on September 10, 2009, you called the Town and spoke to Town Manager John Dyke. Mr. Dyke purportedly referred you to the Town's attorney, Emily Waddle. You stated that you requested records regarding the Town's Park Centre Project but those records "have not been denied [sic] I have had no response to my ... request."

My office forwarded a copy of your complaint to the Town. Ms. Waddle's response on behalf of the Town is enclosed for your review. Ms. Waddle states that the Town ever denied your request. She claims that she responded to your letter of September 10th by letter that same day. In her September 10th written response to you, which she also enclosed, Ms. Waddle states that she will "happily turn this request over to the Town of DeMotte and get back with you several dates and times to coordinate a mutually convenient time for you to come and examine the requested records at the DeMotte Town Hall." On September 24, 2009, Ms. Waddle sent you a second letter in which she included several proposed dates for you to examine the information you requested. On October 1, 2009, you sent another request to Mr. Dyke requesting the same records as before. The next day, Ms. Waddle responded and, again, listed the dates that she previously provided to you in the letter of September 24th.

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.” I.C. § 5-14-3-1. The Town does not contest that it is 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 Town during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The burden of proof for nondisclosure of a public record is on the public agency that would deny access to the record. I.C. § 5-14-3-1.

Nothing in the APRA indicates that an agency’s failure to provide a requester with “instant access” to requested records constitutes a denial of access. “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.” *Opinion of the Public Access Counselor 02-FC-09* (O’Connor; advising that an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added).

Here, the Town’s actions in response to your request do not indicate a denial of access. Although the Town was entitled to take up to seven (7) days to respond to your written requests for access to public records, I.C. §5-14-3-9(b), Ms. Waddle responded either the same day or the next day and stated that the Town would make records available to you. Ms. Waddle sent you two letters that included proposed times and dates for you to inspect the records, but you apparently made no effort to communicate with Ms. Waddle regarding a mutually agreeable time for such inspection. Considering Ms. Waddle’s repeated efforts to make the records available to you, it is my opinion that the Town did not deny you access to public records within the meaning of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the APRA because it never denied your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Emily S. Waddle, Kallenbach, Burkhart & Waddle (*via facsimile*)