



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 9, 2010

Mr. Lynn D. Witt
13403 2nd Street
P.O. Box B-220
Grabill, IN 46741
ldwittgrabill@yahoo.com

Re: Formal Complaint 10-FC-117; Alleged Violation of the Access to Public Records Act by the Town of Grabill

Dear Mr. Witt:

This advisory opinion is in response to your formal complaint alleging the Town of Grabill (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The Town's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the clerk failed to respond to your requests for various information regarding the Town's financials. In response, Clerk-Treasurer Cynthia Barhydt states that she has already provided you with all of the responsive records that she maintains.

ANALYSIS

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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If the Town failed to respond to your request within these timeframes, the Town violated the APRA. Because you do not provide me with the dates of your requests, I cannot determine whether or not the Town complied with these requirements.

As to the substance of your request, Ms. Barhydt is correct that she need not create any records in response to your request. I note that if you believe your position as a member of the Grabill Town Council gives you the right to request that Ms. Barhydt create a record and provide you with a copy of the same, that is an issue that lies outside of the APRA. Under the APRA, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” Thus, if Ms. Barhydt has provided you with all responsive records that she maintains (or that are maintained off-site for or on behalf of the Town), Ms. Barhydt has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that if Ms. Barhydt has provided you with all responsive records, she has complied with the APRA. The APRA does not obligate public agencies to create new records in response to a public records request.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Cynthia Barhydt