



STATE OF INDIANA

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May 12, 2010

Mr. Ronnie A. Long
17 Knox Ct.
Mooresville, IN 46158

Re: Formal Complaint 10-FC-91; Alleged Violation of the Access to Public Records Act by the Town of Brooklyn

Dear Mr. Long:

This advisory opinion is in response to your formal complaint alleging the Town of Brooklyn (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Town's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you requested the Town provide you with access to records of council meetings held from 2002 through 2008. You submitted your request to Becky McGlauchlen, the Town's clerk-treasurer, on March 2, 2010. On March 15, 2010, you received paper minutes for all meetings held until December 2009, but to date you still have not received minutes for January or February of this year or audio recordings for the meetings. You state that Ms. McGlauchlen informed you that she had no way to duplicate the audio recordings. This complaint followed.

My office forwarded a copy of your complaint to the Town. In Ms. McGlauchlen's response, she states that she copied 1,050 pages of minutes for you, but the Town could not copy the audio tapes because it does not have two tape recorders. She claims that "[w]e have tried to find a cassette player to record from one tape to the other, but they are hard to locate due to digital technology." Ms. McGlauchlen maintains that the Town is having difficulty transferring tape recordings of meetings onto CDs in accordance with your request, but she assures me that the Town is doing everything it can to make your requested copies. Finally, Ms. McGlauchlen says that she purchased a digital recorder in March of 2009 that enabled her to begin making digital recordings that she can transfer to CDs immediately. As a result, she states that she can at this point make copies of meetings from March of 2009 through February of 2010 for you.

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. The Town is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, a public agency shall either provide the requested copies to the person making the request or allow the person to make copies on the agency’s equipment or on the person’s own equipment. I.C. § 5-14-3-3(b). If (1) a person is entitled to a copy of a public record under this chapter; and (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the public agency must provide at least one copy of the public record to the person. If a public agency does not have reasonable access to a machine capable of reproducing the record, the person is only entitled to inspect and manually transcribe the record. I.C. § 5-14-3-8(e).

Here, the Town has provided you with 1,050 pages of records and has assured me that it will provide you with the audio recordings that the Town has the capability to reproduce. Ms. McGlauchlen has assured me that the Town does not currently have the technological means to reproduce the remaining audio files subject to your request, but that she is working diligently to ensure that you receive those records as soon as possible. In accordance with section 8 of the APRA, unless the Town already has the technology capable of producing the record in the format you requested and is choosing to do so, it is my opinion that the Town has not acted contrary to the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Town did not violate the APRA when it failed to provide you with copies that it was incapable of producing. Ms. McGlauchlen has assured me that she will provide you with the remaining records as soon as is practicable. I trust this resolves your complaint.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Becky McGlauchlen