



STATE OF INDIANA

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March 11, 2011

Mr. Hugh P. Burns
8128 Hurricane St. S.E.
Elizabeth, IN 47117

Re: Formal Complaint 11-FC-65; Alleged Violation of the Access to Public Records Act by the Town of Elizabeth

Dear Mr. Burns:

This advisory opinion is in response to your formal complaint alleging the Town of Elizabeth ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. My office forwarded a copy of your complaint to the Town, but we did not receive a response. I have granted your request for priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

According to your complaint, you placed a records request in the inter-office mailbox of the Town's clerk-treasurer on February 28, 2011. Your request sought access to various financial records of the Town. As of March 4th, you had not received a response to your request.

ANALYSIS

Under the APRA, 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.

Here, you state that you placed your request in the inter-office mailbox of the clerk-treasurer. As such, in my opinion you submitted your request "by mail" within the meaning of subsection 9(b) and the Town had seven days from receipt of the request to

respond. Because you filed your complaint prior to the expiration of that seven-day period, however, I cannot determine whether or not the Town violated the APRA by failing to respond in a timely manner.

Moreover, without the benefit of a response from the Town, it is unclear whether or not the Town has a legal basis for withholding the requested records (assuming, of course, that the Town does intend to deny you access, which is not clear from the facts presented). Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Thus, if the Town cannot justify withholding the records under the APRA, I encourage the Town to release the records to you as soon as possible. To the extent the Town persists in a denial of access following the issuance of an advisory opinion from this office and you believe the Town to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the APRA if it responded to your mailed request within seven days. Because your complaint was filed before the Town actually denied your request, I cannot issue an opinion regarding the substance of any such denial. The burden is on the Town to sustain any denial of a request for access to public records. If the Town cannot sustain its burden, the Town should release to you all responsive records within a reasonable period of time.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Adrian Hall