



STATE OF INDIANA

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May 17, 2012

David R. Snyder
236 E Pendle St
South Bend, Indiana 46637

Re: Formal Complaint 12-FC-101; Alleged Violation of the Access to Public Records Act by the Town of Roseland

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Town of Roseland ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Town. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you provide that Susan Hammonds resigned as the Town's Clerk-Treasurer on January 6, 2012. The Town Council President is legally able to appoint a Clerk-Treasurer, if the Chief Deputy Clerk-Treasurer refuses the position. On January 6, 2012, Robin Ackerson was appointed Clerk-Treasurer by Elizabeth McCombs. I.C. § 3-13-11-5(c) provides that the appointment ends in thirty (30) days or before if the St. Joseph Democratic County Chairman appoints a Roseland Clerk-Treasurer. From the expiration of the interim until the date of your formal complaint, you allege that no Clerk-Treasurer has been appointed.

You allege that on March 27, 2012 you submitted a written request to the Town for records pursuant to the APRA. You provide that due to the vacancy in the Clerk-Treasurer's position, the Clerk-Treasurer has failed to respond or provide any records in response to your request. You further allege if Ms. Ackerson is still in possession of the Clerk-Treasurer's records and equipment, she is doing so illegally, and further is committing theft if she is receiving town funds.

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."

See I.C. § 5-14-3-1. The Town is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

From reviewing the request that you submitted to the Clerk-Treasurer on March 27, 2012 and the formal complaint that was filed, the essence of your complaint appears to be that the Town violated the APRA, not because the Town failed to respond to your requests, but because the Town's Clerk-Treasurer did not personally handle your requests or issue a response to your formal complaint. The APRA does not specifically identify the person responsible within each public agency for responding to records requests or issuing denials. If an agency denies a request, the name and title or position of the person responsible for the denial must be provided. *See* I.C. § 5-14-3-9(c). As such, it is my opinion that the Town did not violate the APRA by not having the Clerk-Treasurer personally respond to your request for records or to your formal complaint filed with the Public Access Counselor's Office.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Town of Roseland